

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29347

This is a summary of an order issued following the February 2016 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 directed his clients to sign, but not date, numerous incomplete and blank forms, including account registration forms, transfer forms, and annuity application forms, which did not include written disclosure of information such as fees, sales charges, or surrender charges.

II. Findings of Fact

Respondent’s Relationship with the Clients

In October 2011, the Clients entered into a Financial Planning and Consulting Agreement (“Agreement”) with ABC Financial Services, Inc. and ABC Tax and Business, LLC. Respondent served as the Clients’ point of contact with the ABC Companies. In the Agreement, the Clients selected the “Comprehensive Planning Service,” which provided financial planning services and tax planning services for an annual fee of \$360. The Agreement also disclosed to the Clients that Respondent would earn compensation if the Clients implemented some or all of Respondent’s recommendations. Based on the record it appears that Respondent collected information from the Clients necessary to prepare a financial plan in November 2011. Respondent admitted in his Answer to CFP Board’s Complaint that at all times relevant to the Complaint, he was in a financial planning relationship with the Clients.

December 2011 Forms

In December 2011, Respondent flew to the Clients’ residence for an in-person meeting and to deliver the financial plan. Respondent made several recommendations pursuant to his financial plan. Respondent presented the Clients with the following forms: (a) Ms. Client’s Application to purchase \$6,000 of the DEF Fund; (b) Mr. Client’s forms to liquidate his Roth IRA and purchase the DEF Fund; and (c) Ms. Client’s forms to liquidate her IRA and purchase the JKL Variable Annuity. Ms. Client testified that these forms were incomplete except for their typewritten contact information. The Clients alleged that Respondent asked the Clients to sign, but not date, the forms. The Clients signed but did not date the forms. According to the Clients, when Mr. Client asked Respondent about signing incomplete documents, Respondent stated that “this is just the way things are done.”

The Clients alleged the forms they signed at the meeting in December 2011 did not disclose the sales charge on the purchase of DEF Fund, which was approximately 3.48%-4.25%. Ms. Client established automatic monthly contributions to her DEF Fund account in the amount of \$500. Mr. Client established automatic monthly contributions to his DEF Fund account in the amount of \$500. Each month, the charge was assessed each time the Clients made an automatic contribution. Ms. Client’s Investment Statement for 2013 showed she paid approximately \$240 in sales charges. Mr. Client’s Investment Statement for 2013 showed he paid at least \$200 in

sales charges. Had the Clients been informed about the sales charge, they stated would not have purchased the DEF Fund.

The Clients also stated that Respondent failed to disclose to the Clients that early withdrawal from the JKL Variable Annuity would trigger surrender charges. Ms. Client eventually surrendered the JKL Variable Annuity in February 2014. The gross withdrawal amount of her JKL Variable Annuity was approximately \$95,000. The net amount of the check to Ms. Client was approximately \$91,000. Therefore, the surrender charge assessed to the JKL Variable Annuity was approximately \$4,000 or approximately 5%.

Respondent denies that he asked the Clients to sign blank forms. Respondent stated that he completed the paperwork with the Clients at their kitchen table and asked them to sign and date the forms. Respondent also asserts that the Clients did not date the forms other than the prospectus receipt and direction to exchange forms. Respondent contends that he discussed with Clients the costs and fees for all investments at issue. Neither the Clients nor Respondent produced copies of the documents that the Clients signed as they appeared when the Respondent presented them to Clients for signature.

Forms Completed or Sent After December 2011

After the meeting in December 2011, Respondent mailed the following forms to the Clients: (a) Mr. Client's forms to liquidate his GHI Money Market IRA and purchase the MNO Landmark Variable Annuity; (b) the Client's forms to liquidate their joint IRA in the PQR Select Fund and purchase the DEF Fund; and (c) the Client's forms to purchase in their joint IRA \$70,000 of the DEF Fund. The Clients alleged these forms were incomplete, except for the Clients' typewritten contact information. The Clients signed and initialed the forms where indicated. The Clients further alleged that neither Respondent nor the forms disclosed: (a) the specific funds within the MNO Variable Annuity in which the Clients' funds would be invested; (b) the expenses and surrender fees of the MNO Variable Annuity; or (c) the sales charge on the purchase of the DEF Fund. The Clients were making twice monthly automatic contributions to their joint IRA account in the amount of \$250. The account incurred a twice monthly sales charge of approximately 3.48%-4.25%. The Clients' Investment Statement for 2013 showed they paid a total of approximately \$200 in sales charges. Respondent denied these allegations.

In August 2012, Respondent mailed to Mr. Client forms that contained disclosures for the purchase for approximately \$850 of the MNO Landmark Variable Annuity. The Clients alleged all the forms were blank, except for his typewritten contact information. The Clients further alleged that neither Respondent nor the forms disclosed the surrender fees. Mr. Client signed and initialed the forms where indicated. Mr. Client surrendered his MNO Variable Annuity in February 2014. The Policy Detail for Mr. Client's MNO Variable Annuity in February 2014 showed the current value at approximately \$122,000. Mr. Client's Form 1099 for the surrender indicated a gross distribution of approximately \$117,000. Therefore, the surrender charge was approximately \$5,600 or 5%, provided there was no bonus recapture. Respondent denied these allegations and stated that the form had been completed prior to Mr. Client signing the forms.

In February 2013, Respondent mailed to the Clients a joint application to purchase \$20,000 of the STU Fund. This account was opened in February 2013 with a balance of \$20,000. In November 2013, the Clients began making automatic monthly contributions to this account in the amount of \$250. A charge of 5.52%, or approximately \$14.00, was assessed each month the Clients made an automatic contribution. In one year, the sales charges would total approximately \$165. The Clients alleged they would not have invested in the STU Fund had they known about the sales charge. The Clients alleged that all the forms were blank, except for their typewritten contact information. The Clients signed and initialed the forms where indicated. The Clients further alleged that neither Respondent nor the forms disclosed the sales charge. Respondent disputed these allegations. Respondent contends that he had a conference call with the Clients in January 2013, to discuss the Client's extra cash reserves. Respondent contends that he explained all the features and costs of the STU Fund to the Clients. Respondent

stated that he personally filled in the handwritten information on these forms prior to the paperwork being sent out to them.

In October 2013, Respondent mailed to the Clients a joint application to liquidate their DEF Fund and purchase the VWX Strategic Income Portfolio for approximately \$61,000. The Clients alleged that all the forms were blank, except for the Clients' typewritten contact information. The Clients signed and initialed where indicated. The Clients alleged that neither Respondent nor the forms disclosed the fees associated with this investment, the differences between Class A, B and C shares of mutual funds, the internal expenses, opening fee, the underlying investments in the portfolio, or that the Clients were establishing a managed account. Respondent disputed these allegations. Respondent contends that in October 2013, Ms. Client said she was unhappy with the performance of the DEF Fund and that she wanted more growth potential. In response to her concerns, Respondent recommended the VWX Portfolio after discussing with the Clients all the features of the VWX Portfolio, including the fees. Respondent contends that his assistant, JL, filled out the form before sending it to the Clients.

In January 2014, Respondent mailed account applications for the Clients to purchase XYZ Variable Annuities. All the forms were blank, except for the Clients' typewritten contact information. There were "sign here" and "initial here" tabs placed on the documents, directing the Clients where to sign and initial on the forms. The return envelope was addressed to Respondent's personal residence. Respondent admits these allegations. Respondent contends, however, that he did not know the forms were incomplete and that JL put together the forms and mailed them to the Clients. The Clients did not sign these forms after learning from other advisors that signing blank forms was not industry standard.

Automatic Withdrawal

In January 2014, ABC made an automatic withdrawal from Ms. Client's checking account in the amount of \$1,200. This amount represented ABC's annual financial planning fee. The Clients transferred their accounts away from ABC in February 2014. According to Ms. Client, Respondent and ABC rendered no financial planning services for either her or her husband in 2014. The Clients received no refund and Respondent did not offer one. The Clients did not request a refund. The Financial Planning and Consulting Agreement that the Clients signed in October 2011 indicated that if the Agreement is terminated, and no services have been performed, the fee would be refunded.

ABC Letter of Caution

In March 2014, EV, ABC's Chief Compliance Officer, issued a Letter of Caution to Respondent concerning the blank forms he sent to the Clients in January 2014. ABC found that Respondent attempted to have the Clients initial and sign blank compliance forms and product company business documents with the intention of having the blank, initialed and signed paperwork later completed and submitted for processing. ABC found that Respondent's actions violated Financial Industry Regulatory Authority, Inc. ("FINRA") Rules, and were contrary to ABC's policies and procedures. ABC fined Respondent \$1,000. ABC also removed Respondent from the position as Person-In-Charge of a Branch Office.

FINRA Cautionary Action Letter

In December 2014, FINRA issued a Cautionary Action Letter to Respondent for violating FINRA Rule 2010 when he sent blank forms to the Clients in January 2014. FINRA found that Respondent had failed to observe high standards of commercial honor and just and equitable principles of trade by mailing blank documents to two customers and including a return envelope addressed to his personal residence. This activity also was contrary to the procedures of his employer, ABC Financial Services.

Client Customer Complaint

In April 2015, ABC denied the Clients' customer complaint. ABC found no evidence of any misrepresentations or misleading statement or excessive trading.

III. Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 1.4 of the *Rules of Conduct*, which provides that a certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board.

The Commission found that Respondent, a certificant, failed to provide to financial planning clients the duty of care of a fiduciary, and thus violated Rule 1.4, when on the occasions set forth above: a) he directed Mr. and Mrs. Client, his financial planning clients, to sign forms (including account registration forms, transfer forms, and annuity application forms) that were incomplete except for the Clients' contact information; and b) he did not provide to Mr. and Mrs. Client written disclosure of fees, sales charges, surrender charges, and other information. Accordingly, Respondent failed to act in the Clients' best interest when he had them sign forms authorizing the purchase and/or liquidation of investments without providing the requisite written disclosures of fees, charges, or key features of the investments, thereby depriving the Clients of the opportunity to make informed financial decisions. Thus, Respondent violated Rule 1.4 of the *Rules of Conduct*.

In arriving at this determination, the Commission relied on the testimony of Ms. Client. While Respondent's testimony directly contradicted the testimony of Ms. Client, the Commission determined that it was more likely than not that Ms. Client's testimony was accurate and Respondent's was not. Several facts in the record supported the Commission's determination. First, the record contained incomplete documents Respondent sent to the Clients for the Clients to sign. Respondent does not dispute that incomplete documents were sent to the Clients to sign. Second, Respondent has offered inconsistent testimony regarding the circumstances of the incomplete documents in the record, which damages his credibility regarding whether there were other circumstances where he asked the Clients to sign incomplete documents. For example, Respondent testified that it was his assistant who sent the documents without his knowledge that the documents were incomplete. Yet when discussing these exact documents in his response to CFP Board's Notice of Investigation from November 2014, Respondent stated that "although the documents were blank, [he] assumed that Karen and Peter would fill out the paperwork that [he] sent them and call with any questions that they had before signing or initialing the paperwork." Notably, nowhere in his response to CFP Board did Respondent indicate that his assistant had sent the paperwork and that he was unaware at the time the documents were sent that they were incomplete. Second, Ms. Client's testimony is buttressed by the affidavit filed by her brother, MK, indicating that Respondent operated in the same manner with respect to signing incomplete documents for MK's accounts.

With respect to the lack of fee disclosures, as stated above, the Commission did not find Respondent's statements that information relating to fees, sales charges and surrender charges was in the documents to be credible. The Commission also determined that it was unlikely that Respondent provided prospectus to the Clients prior to them signing the forms to purchase the investments. Respondent met with and made recommendations to the Clients at his first in-person meeting with the Clients in December 2011. At this meeting, Respondent presented a wide range of recommendations. The Commission determined that it defied credibility that Respondent brought with him to his meeting with the Clients the prospectuses for all of the possible recommendations he would be presenting to the Clients at that meeting. Even if Respondent had brought with him all of the prospectuses, his

testimony indicates that he is unsure if he provided it to the Clients. Finally, Ms. Client credibly testified that she was unaware of the fees, sales charges and surrender charges associated with the products.

Second Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 2.1 of the *Rules of Conduct*, which provides, in relevant part, that a certificant shall not fail to disclose or otherwise omit facts where that disclosure is necessary to avoid misleading clients.

The Commission found that Respondent, a certificant, misled clients on several occasions by omitting facts that were required to be disclosed in writing when he directed his financial planning clients to sign, but not date, numerous incomplete forms, including account registration forms, transfer forms, and annuity application forms, which did not include written disclosure of information such as fees, sales charges, or surrender charges. The Commission's rationale for making this finding is contained in its discussion under the first ground for discipline. Thus, Respondent violated Rule 2.1 of the *Rules of Conduct*.

Third Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 2.2(a)(1) of the *Rules of Conduct*, which provides that a certificant shall disclose to a prospective client or client an accurate and understandable description of the compensation arrangements being offered. This description must include information related to costs and compensation to the certificant and/or the certificant's employer.

The Commission found that Respondent, a certificant, failed to disclose to his clients accurate and understandable information related to costs when, on several occasions, he directed the Clients, his financial planning clients, to sign, but not date, numerous incomplete and blank forms, including account registration forms, transfer forms, and annuity application forms, which did not include written disclosure of information such as fees, sales charges, or surrender charges. The Commission's rationale for making this finding is contained in its discussion under the first ground for discipline. Thus, Respondent violated Rule 2.2(a)(1) of the *Rules of Conduct*.

Fourth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 2.2(e) of the *Rules of Conduct*, which provides that a certificant shall disclose to a prospective client or client an accurate and understandable description of the compensation arrangements being offered. This description must include information related to costs and compensation to the certificant and/or the certificant's employer. If the services include financial planning or material elements of financial planning, these disclosures must be in writing.

The Commission found that Respondent, a certificant, failed to disclose in writing to financial planning clients accurate and understandable information related to costs when, on several occasions, he directed the Clients, his financial planning clients, to sign, but not date, numerous incomplete and blank forms, including account registration forms, transfer forms, and annuity application forms, which did not include written disclosure of information such as fees, sales charges, or surrender charges. The Commission's rationale for making this finding is contained in its discussion under the first ground for discipline. Thus, Respondent violated Rule 2.2(e) of the *Rules of Conduct*.

Fifth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.1 of the *Rules of Conduct*, which provides that a certificant shall treat prospective clients and clients fairly and provide professional services with integrity and objectivity.

The Commission found that Respondent, a certificant, failed to treat clients fairly when on several occasions, he directed the Clients to sign, but not date, numerous incomplete and blank forms, including account registration forms, transfer forms, and annuity application forms, which did not include written disclosure of information such as fees, sales charges, or surrender charges. The Commission's rationale for making this finding is contained in its discussion under the first ground for discipline. Thus, Respondent violated Rule 4.1 of the *Rules of Conduct*.

CFP Board's Complaint alleged that in January 2014, Respondent accepted the Clients' \$1,200 financial planning fee after the Clients had transferred their accounts from the ABC Companies, but the Commission did not find sufficient evidence to support this allegation. The Commission determined that the Clients paid the fee to the ABC Companies and not Respondent. Thus, it would have been the ABC Companies who would have to refund the fee and not Respondent. Therefore, this conduct did not violate Rule 4.1 of the *Rules of Conduct*.

Sixth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.3 of the *Rules of Conduct*, which provides that a certificant shall be in compliance with applicable regulatory requirements governing professional services provided to the client.

The Commission found that Respondent, a certificant, failed to comply with applicable regulatory requirements governing professional services provided to the client when he failed to observe high standards of commercial honor and just and equitable principles of trade by mailing incomplete and blank forms to the Clients to sign and included a return envelope addressed to his personal residence, in violation of FINRA Rule 2010. The Commission relied on the findings of FINRA in its Cautionary Action Letter in making this determination. Thus, Respondent violated Rule 4.3 of the *Rules of Conduct*.

Seventh Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 4.4 of the *Rules of Conduct*, which provides that a certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.

The Commission found that Respondent, a certificant, failed to exercise reasonable and prudent professional judgment in providing professional services to clients when on several occasions, he directed his clients to sign, but not date, numerous incomplete and blank forms, including account registration forms, transfer forms, and annuity application forms, which did not include written disclosure of information such as fees, sales charges, or surrender charges. The Commission's rationale for making this finding is contained in its discussion under the first ground for discipline. Thus, Respondent violated Rules 4.4 of the *Rules of Conduct*.

CFP Board's Complaint alleged that in January 2014, Respondent accepted the Clients' \$1,200 financial planning fee after the Clients had transferred their accounts from the ABC Companies, but the Commission did not find sufficient evidence to support this allegation. The Commission determined that the Clients paid the fee to the ABC Companies and not Respondent. Thus, it would have been the ABC Companies who would have to refund the fee and not Respondent. Therefore, this conduct did not violate Rule 4.4 of the *Rules of Conduct*.

Eighth Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 5.1 of the *Rules of Conduct*, which provides that 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 found that Respondent, a certificant, failed to perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics* when he directed his financial planning clients to sign, but not date, numerous incomplete and blank forms, including account registration forms, transfer forms, and annuity application forms, which did not include written disclosure of information such as fees, sales charges, or surrender charges, in violation of his firm's written supervisory procedures. For this conduct, Respondent's firm issued him a Letter of Caution, removed him as branch office supervisor, and fined him \$1,000. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

Ninth Ground for Discipline

Pursuant to Article 3(b) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Practice Standard 400-3 of the *Practice Standards*, which provides that the financial planning practitioner shall communicate the recommendation(s) in a manner and to an extent reasonably necessary to assist the client in making an informed decision.

The Commission found that Respondent, a financial planning practitioner, failed to communicate the recommendation(s) in a manner and to an extent reasonably necessary to assist the client in making an informed decision when, on several occasions, he sent incomplete and blank forms to the Clients for them to sign. The Clients signed several forms without having either written or verbal disclosure of important details such as fees, costs and risks associated with each investment. The Commission's rationale for making this finding is contained in its discussion under the first ground for discipline. Thus, Respondent violated *Practice Standard* 400-3.

IV. Discipline Imposed

The Commission determined that Respondent's conduct violated Rules 1.4, 2.1, 2.2(a), 2.2(e), 4.1, 4.3, 4.4 and 5.1 of the *Rules of Conduct* and *Practice Standard* 400-3, providing grounds for discipline under Articles 3(a) and 3(b) of the *Disciplinary Rules*. Upon consideration of the facts presented, the Commission issued to Respondent a six-month Suspension of his CFP® certification pursuant to Article 4.3 of the *Disciplinary Rules*. The suspension is effective from **April 25, 2016** until **October 25, 2016**.

The Commission cited the following mitigating factors:

1. Respondent has been in the financial planning industry for 15 years and has no prior complaints;
2. Respondent cooperated fully with CFP Board's investigation;
3. Respondent worked aggressively with the Clients to get them a discount on a product that they were buying, which indicated a desire to advocate on their behalf; and
4. Respondent's clients were college educated professionals and the Commission thought they bore some responsibility in the situation. If the clients were unsure about fees or product expenses they should have addressed that issue with Respondent.

The Commission considered in aggravation that Respondent's testimony lacked credibility. For example, Respondent stated that he sent out blank forms for signatures but later changed his story to state that his assistant

sent out blank forms. Respondent also stated that he was only cited for failure to supervise by FINRA, which was not true as is evidenced by the FINRA Cautionary Action Letter that does not reference a supervisory violation.

In arriving at its decision, the Commission consulted *Sanction Guideline 5* (Breach of Fiduciary Duty), which called for a one year and one day suspension, but felt the mitigating factors warranted a shorter suspension. The Commission also consulted *Anonymous Case Histories* (“ACH”) 29057, 28657 and 27488, but did not give great weight to these ACHs because the ACHs did not demonstrate the pattern of misconduct that was in the record for this case.