CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29350

This is a summary of a decision issued during the February 2015 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. Rules 1.1 through 6.5 of the *Rules of Conduct* were in effect.

I. Issues Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) failed to disclose information related to the liquidity of, risks associated with, and the assets underlying an investment product; 2) failed to make and preserve books and records as required under the Exchange Act rules by having a record of basic identifying and financial information for the two clients involved in purchasing an investment; 3) allowed an unregistered employee to effect the purchase of an investment; and 4) failed to enforce his firm's written supervisory procedures by failing to prepare new account forms and record basic identifying and financial information for the clients' who purchased an investment.

II. Findings of Fact

GG

According to the Financial Industry Regulatory Authority, Inc. ("FINRA," formerly known as the National Association of Securities Dealers or "NASD") AWC, GG purchases life insurance policies on the secondary market at a discount. After paying the premiums on the policies until the insured dies, GG collects the face value of the insurance benefit. GG has a limited operating history and purchased almost all of the policies it owns with borrowed funds.

In 2012, GG began selling the Debentures for a minimum investment of $25,000, with additional investments made in $1000 increments. The Debentures had varying maturity terms and interest rates, beginning with a six-month maturity date for a 4.75% annual interest rate and up to a seven-year maturity date for 9.50%.

The Debentures' prospectus states that GG's insurance policies are not collateral for obligations under the Debentures. GG's subsidiaries own the insurance policies, most of which have been pledged to secure a revolving credit facility. The Debentures are secured by the corporate assets of GG, which is made up primarily of its stake in GG Life Insurance. The prospectus cautions that the Debentures may be considered speculative investments and involve a high degree of risk, including the risk of loss of the entire investment. The prospectus further cautions that the GG's success is dependent upon, among other things, its continued ability to raise funds to pay its obligations, including interest payments on the Debentures. Unless the investor takes action to cash out the investment, the Debentures renew automatically. The Debentures are illiquid and investors do not have access to their principal prior to maturity, unless the request is due to death, bankruptcy or total disability. In the event GG does decide to prepay the debentures upon the request of the investor, (other than after death, bankruptcy or total disability), GG will charge the investor a 6% prepayment fee. There is no secondary market for the Debentures and GG reserves the right to redeem the Debentures at any time. Because of the above-mentioned reasons, an investment in the Debentures is not suitable for investors who require liquidity prior to the maturity date.

GG provided an initial fact sheet that stated that GG's assets consisted "primarily of insurance policies purchased in the secondary market." In November 2012, FINRA contacted GG and informed it that its fact sheet contained a statement that failed to explain the life insurance policies were owned by GG's subsidiaries and that the Debentures were backed only by GG's holdings in its subsidiaries.

The Debentures Posting

Respondent is Chief Executive Officer ("CEO") and Chief Compliance Officer ("CCO") of FINRA member firm SC. SC conducts private placements and a general securities business. In approximately June or July 2012, SC and Respondent posted on the website of a password-protected business networking organization sales material regarding the Debentures. The posting stated as follows:

> $ 250,000,000 offering: Capital Raise for Publicly Registered Secured Corporate Debt available for US and Canadian investment.
>
> **Investment Features:**
>
> - Non-correlated asset to the markets, real estate, commodities, oil and gas.
> - Maturity term options: 6 months, 1, 2, 3, 4, 5, 7 years.
> - Respective annual interest rates to the maturity terms: 4.75%, 5.50%, 7.00%, 8.00%, 8.50%, 9.00%, 9.50%.
> - Interest payments can be made monthly, annually or reinvested to provide compounding.
> - Commission paid does not reduce investable assets (100% of funds are invested for the applicable rate on each maturity)
>
> Underlying investments are a portfolio of life insurance policies purchased in the secondary market from seniors held by highly rated well established major Insurance carriers. These are not viatacals.
>
> Over 30,000 life insurance policies have been evaluated with only 200---300 selected for a portfolio of future paid death benefits. These purchased policies are actually helping seniors (average age 80+) who no longer need, want or can afford the policy premiums.
>
> According to the American Council of Life Insurers almost 90% of all life insurance policies either lapse or get surrendered with no benefit ever paid to the individual. Now these seniors can receive significant money directly paid to them for the transfer of their policy into the secondary market instead of getting nothing. The use of funds of this offering is to primarily continue to buy more eligible high quality policies and pay premiums and increase the future paid benefits in the portfolio.
>
> **My broker/dealer is a member of the selling group for this offering (and receiving a fee/commission from the company)**
>
> **Investment may not be suitable for everyone and that a complete list of risk factors can be found in the prospectus.**

The posting informed those who were interested to contact Respondent directly.

Client Purchases of the Debentures

On behalf of SC, Respondent approved two transactions to purchase the Debentures. The first sale occurred in May 2012, when Respondent and SC employee AP sold the Debentures to TC. According to Respondent, TC was an accredited investor with a high risk tolerance and whose income objective was growth/income. TC had an annual net income of approximately $500,000 and a $50 million net worth. TC purchased Debentures valued at

$250,000 for which the firm received approximately $12,000 in total commission. AP received approximately $5,800 of the commission.

The second sale occurred in December 2012, when AP sold the Debentures to DT. According to Respondent, DT was an accredited investor with a moderate risk tolerance and whose investment objective was to diversify investments. DT had an annual net income of $150,000 and a $1 million net worth. DT purchased Debentures valued at $50,000 for which the firm received $1,562.50 in total commission. AP received $781.25 of the commission. Respondent supervised AP and approved the sales to TC and DT.

2014 FINRA AWC

In January 2013, FINRA began an investigation into Respondent's sales of the Debentures. In June 2014, Respondent entered into a FINRA AWC, in which Respondent and SC accepted and consented, without admitting or denying the findings, to the entry of the following FINRA's findings:

Respondent's Posting Omitted Material Information

Respondent's posting omitted material information and was misleading because it: 1) did not provide a sound basis for evaluating the Debentures and emphasized the Debentures' interest rate, but failed to disclose its illiquidity; 2) failed to disclose the substantial risks involved in the investment; and 3) incorrectly stated that the underlying investments of the Debentures were a portfolio of life insurance policies purchased in the secondary market when, in fact, the Debentures were not a portfolio of insurance policies because the policies were held by GG's subsidiaries and had been pledged as collateral for a revolving credit facility. FINRA determined that based on the reasoning above, Respondent's posting violated NASD Rule 2210(d)(1)(A) and FINRA Rule 2010.

Respondent Failed to Record Required Customer Information

Respondent and SC failed to prepare any new account forms and record basic identifying and financial information, such as annual income, net worth and investment objectives for the clients purchasing the Debentures. Respondent stated that the subscription agreements the two clients signed served as their account opening documents for the Debentures and the clients received quarterly account statements.

Respondent and SC's failure to record basic identifying and financial information for the two clients involved in the Debenture transactions was a violation of FINRA Rule 4511(a), which requires the maintenance of books and records in accordance with the Exchange Act, and FINRA Rule 2010.

Respondent Permitted an Unregistered Employee to Sell Securities

Between May 2012 and July 2012, Respondent and SC permitted AP to sell securities prior to the time FINRA approved AP's application for registration with the firm. SC filed a Form U4 for AP in May 2012, but because of deficiencies relating to AP's continuing education requirements, FINRA did not approve the application until July 2012. During the relevant period, AP sold approximately $250,000 of the Debentures to two clients in one transaction. SC later reversed the transaction and refunded the clients' money. By permitting their employee to sell Debentures valued at approximately $250,000 prior to his approval for registration with FINRA, Respondent and SC violated Article V, Section 1 of FINRA's By-Laws and FINRA Rule 2010.

Respondent Failed to Implement his Firm's Written Procedures

SC's written supervisory procedures ("WSPs") contained provisions restricting unregistered individuals from engaging in the securities business. SC's WSPs also required the creation of new account documents and the collection of customers' suitability information. As CEO and CCO, Respondent was responsible for the implementation of SC's procedures. Respondent and SC failed to enforce the firm's WSPs by allowing an unregistered employee to effect the purchase of Debentures valued at approximately $250,000. Respondent and SC also failed to enforce the WSPs by not requiring the creation of new account documents for the two GG Debentures transactions. As firm principal, Respondent signed the subscription agreements for both transactions. By failing to enforce the firm's WSPs related to sales by unregistered individuals and collection of client information, Respondent and SC violated NASD Rule 3010(b)(1) and FINRA Rule 2010.

As a result of the above-mentioned violations, without admitting or denying FINRA's findings, Respondent consented to 20-day suspension and a $25,000 fine, imposed jointly and severally with SC.

III. Rule Violations

First, the Commission determined that Respondent failed to provide a sound basis for evaluating the Debentures in the Deal Network posting and failed to disclose the illiquidity of the Debentures while emphasizing the interest rates. The Commission also determined that FINRA found that this conduct violated NASD Rule 2210(d)(1)(A) and FINRA Rule 2010. The Commission determined that this conduct violated Rules 2.1, 4.3 and 4.4 of the *Rules of Conduct*. CFP Board alleged in its Complaint that this conduct also violated Rules 4.1 and 4.5 of the *Rules of Conduct*. The Commission determined that this conduct did not violate Rule 4.1 because while Respondent did not provide details as identified in the FINRA AWC, Respondent referred potential investors to the prospectus for a more fulsome discussion of the risks associated with the Debentures. Thus, his conduct did not lack integrity or objectivity. The Commission also determined that the information identified by FINRA that was missing did not form a basis for finding that the Debentures were unsuitable for the clients who purchased the Debentures from Respondent.

Second, the Commission determined that Respondent failed to disclose the substantial risks involved in the Debentures. The Commission also determined that FINRA found that this conduct violated NASD Rule 2210(d)(1)(A) and FINRA Rule 2010. The Commission determined that this conduct violated Rules 2.1, 4.3 and 4.4. CFP Board alleged in its complaint that this conduct also violated Rules 4.1 and 4.5. The Commission determined that this conduct did not violate Rule 4.1 because while Respondent did not provide details as identified in the FINRA AWC, Respondent did refer clients to the prospectus for a more fulsome discussion of the risks associated with the Debentures. Thus, his conduct did not lack integrity or objectivity. The Commission also determined that the information identified by FINRA that was missing did not form a basis for finding that the Debentures were unsuitable for the clients who purchased the Debentures from Respondent.

Third, the Commission determined that Respondent incorrectly stated in the posting that the investments underlying the Debentures were a portfolio of life insurance policies purchased in the secondary market when the policies were actually pledged by GG's subsidiary as a line of collateral for a revolving credit facility. The Commission also determined that FINRA found that this conduct violated NASD Rule 2210(d)(1)(A) and FINRA Rule 2010. The Commission determined that this conduct violated Rules 2.1, 4.3 and 4.4 of the *Rules of Conduct*. CFP Board alleged in its complaint that this conduct also violated Rules 4.1 and 4.5 of the *Rules of Conduct*. The Commission determined that this conduct did not violate Rule 4.1 because while Respondent did not provide details as identified in the FINRA AWC, Respondent did refer clients to the prospectus, which contained an accurate description of the assets underlying the Debentures. Further, Respondent relied on FINRA-approved sales materials in putting together the posting and those materials originally contained a statement similar to the statement made in the posting. Respondent relied on the information provided in the sales materials to be accurate. Thus, his conduct did not lack integrity or objectivity. The Commission also determined that the information identified by FINRA that was missing did not form a basis for finding that the Debentures were unsuitable for the clients who purchased the Debentures from Respondent.

Fourth, the Commission determined that Respondent failed to make and preserve books and records as required under the Exchange Act rules by having SC record basic identifying and financial information for the two clients involved in the debenture transactions, in violation of FINRA Rules 4511(a) and 2010. The Commission determined that this conduct violated Rules 4.3 and 6.5 of the *Rules of Conduct*.

Fifth, the Commission determined that Respondent allowed an unregistered employee to effect the purchase of Debentures valued at approximately $250,000 in violation of Article V, Section 1 of FINRA's By-Laws and FINRA Rule 2010. The Commission determined that this conduct violated Rules 4.3, 4.6, 5.1 and 6.5 of the *Rules of Conduct*.

Sixth, the Commission determined that Respondent failed to enforce his firm's WSPs by failing to prepare new account forms and record basic identifying and financial information for the clients' who purchased the Debentures in violation of NASD Rule 3010(b)(1) and FINRA Rule 2010. The Commission determined that this conduct violated Rules 4.3, 5.1 and 6.5 of the *Rules of Conduct*.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(d) 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 for discipline under Article 3(a) of the *Disciplinary Rules* because Respondent violated Rules 2.1, 4.1, 4.3, 4.4, 4.5, 4.6, 5.1, and 6.5 of the *Rules of Conduct*. Article 3(d) of CFP Board's Disciplinary Rules provides grounds for discipline for any act that is the proper basis of professional discipline. The Commission found grounds for discipline under Article 3(d) because FINRA suspended Respondent in a principal capacity for 20 calendar days. After careful consideration of the evidence in Respondent's matter, the Commission has decided to issue Respondent a private censure pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered as mitigating factors that:

1. Respondent's conduct did not cause any client harm;
2. Respondent had no prior disciplinary history;
3. Respondent alerted FINRA to the fact that an unregistered employee effected the sale of the Debentures;
4. FINRA suspended Respondent in a principal capacity rather than in all capacities; and
5. Respondent hired a full-time compliance consultant to assist him with avoiding any further compliance issues.

The Commission considered in aggravation that Respondent failed to timely disclose his FINRA suspension to CFP Board.

In arriving at its decision, the Commission consulted *Sanction Guidelines* 11 (Diligence), 12 (Employer Policies Violation), 18 (Failure to Supervise), 32 (Professional Discipline Involving a Suspension for Up to One Calendar Month). The Commission also considered Anonymous Case Histories 28379 and 22879.