

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29364

This is a summary of a Settlement Agreement entered into at 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 failed to: 1) adopt and implement written policies and procedures for his firm; 2) review and document the review of such policies and procedures at least annually; and 3) failed to accurately state in his Form ADV Part 2A that he did not complete advisory contracts for all of his clients.

II. Findings of Fact

In September 2014, Respondent disclosed on his Renewal Application that he had entered into a Stipulation and Consent Order (“Order”) with the State Department of Commerce, Division of Securities (“State”). In October 2014, CFP Board mailed to Respondent a Notice of Investigation (“NOI”) requesting information and documentation regarding the Order. Respondent responded to the NOI in November 2014. In November 2014, CFP Board sent Respondent a Request for Additional Information and Documentation. In December 2014, Respondent responded to CFP Board’s Request.

According to Respondent’s November 2014 statement to CFP Board, in September 2012, as a result of previous announced and unannounced audits beginning in September 2011, State initiated an administrative action against him. State filed a Petition to Censure Licensees and Impose a Fine and a Notice of Agency Action for violations of the State Uniform Securities Act relating to insufficient written books and records and insufficient annual review of books and records.

2012 State Petition to Censure Licensees and Impose a Fine (“Petition”)

State staff conducted an announced examination of FAS in September 2011 and an unannounced examination in January 2012. State’s examinations revealed that FAS had no policies and procedures manual existing in any form and did not conduct an annual review of such policies and procedures, as required by applicable regulations.

Following a previous State examination in September 2002, Respondent agreed in writing “to develop and implement a new client and existing client checklist compliance system in accordance with the SEC requirements.” However, at the time of State’s 2011 and 2012 examinations, Respondent could not produce any evidence demonstrating that he had complied with this requirement.

The Act requires that an investment adviser maintain books and records “as the division by rule prescribes...” State Administrative Code (“Code”) in turn requires that an investment adviser shall make, maintain and preserve books and records in compliance with SEC rules.

- FAS’s and Respondent’s failure to a) adopt and implement written policies and procedures and b) review and document the review of such policies and procedures, at least annually, violates the books and records requirements of the Act.

- Although FAS's current Form ADV Part 2A states that a written advisory contract will be completed following an initial client consultation, only six out of 220 clients have a written advisory contract. The Act requires that if the information contained in any document filed with State becomes inaccurate in any material respect, a licensee shall promptly file a correcting amendment.

Respondent admitted that he could not produce the checklist he agreed to develop in 2002 during the 2011-2012 examinations. He could not explain his lapse in follow-through. Respondent stated that 2002 and 2003 were difficult times for his medical documentation business, which was failing. His work schedule was severe and overwhelming. Respondent noted that there was no excuse for the lapse. Respondent indicated that no regulator took any action regarding this deficiency until the 2011-2012 examinations occurred. Respondent admitted that his failure to develop the checklist was a material factor in State issuing its public Order. As to his Compliance Consultant, Respondent stated that in addition to the initial subscription, he continues to subscribe to a monthly compliance service. Respondent delivered his follow-up compliance report to State 61 days after the Order was issued. State took no action for Respondent's one-day late follow-up. Respondent noted that he has written advisory agreements in place for all new clients since the Order was issued, and on most existing clients. Respondent stated that he is working to get the remaining agreements completed by the end of the year.

FAS's and Respondent's failure to maintain books and records as required under the Act warrants sanctions under the Act. State, therefore, petitioned the Securities Commission to enter an Order censuring FAS and Respondent and imposing a fine of \$1,000.00. State submitted its Petition to the Securities Commission in September 2012.

2013 State Stipulation and Consent Order ("Order")

In January 2013, Respondent, without admitting or denying State's findings and conclusions consented to the sanctions to be imposed by State. State's findings and conclusions were identical to those cited in its Petition, referenced above.

State imposed the following remedial actions/sanctions against FAS and Respondent:

- Cease and desist from violating the Act, and to comply with the requirements of the Act in all future business in the state;
- Respondent and FAS have engaged a compliance consultant to assist in remedying the violations. Within 60 days after entry of the Order, Respondent and FAS will inform State in writing as to all specific actions they have taken to implement the consultant's recommendations; and
- Respondent and FAS agree to pay a fine of \$1,000.00 to State within 30 days after entry of the Order.

In March 2013, Respondent delivered to State a copy of his remedial actions taken as agreed in the Order. Respondent engaged compliance consultant HM to assist in remedying his violations. HM's recommendations included developing a new firm brochure, a new individual disclosure brochure, and completing a written policies and procedures manual.

III. Rule Violations

- A. *Rule 4.3 – A certificant 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 he failed to: 1) adopt and implement written policies and procedures for his firm; and 2) review and document the review of such policies and procedures at least annually. These failures violated the Act. In addition, Respondent's Form ADV Part 2A indicated that he would complete a written advisory contract following an initial client consultation. Respondent only completed written advisory contracts for six out of 220 clients. Respondent failed to file a correcting amendment to his firm's Form ADV Part 2A as required by the Act. Thus, Respondent violated Rule 4.3 of the *Rules of Conduct*.

- B. *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 the employer/principal and in accordance with CFP Board's *Code of Ethics* when he offered his firm's Form ADV Part 2A, which indicated that he would complete a written advisory contract following an initial client consultation. In practice, Respondent completed written advisory contracts for only six out of 220 clients. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

- C. *Rule 6.5 – A certificant shall not engage in conduct which reflects adversely on integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.*

Respondent engaged in conduct that reflects adversely on his integrity and fitness as a certificant, upon the CFP® marks, and upon the profession when he failed to: 1) adopt and implement written policies and procedures for his firm; and 2) review and document the review of such policies and procedures at least annually. These failures violated the Act. In addition, Respondent's Form ADV Part 2A indicated that he would complete a written advisory contract following an initial client consultation. Respondent completed written advisory contracts for only six out of 220 clients. Respondent failed to file a correcting amendment to his firm's Form ADV Part 2A as required by the Act. Thus, Respondent violated *Rules of Conduct* Rule 6.5.

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 4.3, 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 Private Censure, pursuant to Article 4.1 of the *Disciplinary Rules*.

In proposing this Counter Offer, the Commission considered as mitigating factors that:

1. Respondent's conduct did not result in client harm;
2. Respondent had no prior discipline;
3. Respondent worked to resolve the compliance issues; and
4. Respondent took the proactive step of hiring a compliance consultant

The Commission did not cite any aggravating factors.

In arriving at its decision, the Commission reviewed *Anonymous Case Histories* 21781 and 26763 and *Sanction Guidelines* 2 (Books and Records Violation), 12 (Employer Policies Violation) and 30 (Securities Law Violation).