

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29463

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. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he engaged in investment advisory business in State without registration.

II. Findings of Fact

2014 State Office of Financial Regulation Regulatory Action

By letter dated December 2014, Respondent’s counsel informed CFP Board that Respondent had entered into a Stipulation and Consent Agreement (“Agreement”) with the State Office of Financial Regulation (“SOFR”). In that Agreement, Respondent acknowledged that he had engaged in an investment advisory business in State without registration. In December 2014, CFP Board sent a Notice of Investigation (“NOI”) to Respondent to obtain information and documents related to Respondent’s Agreement with SOFR. In December 2014, by e-mail, Respondent’s counsel responded to the NOI with copies of correspondence between Respondent and SOFR, a copy of documents reflecting Respondent’s payment of the administrative fine imposed by SOFR, copies of Forms U4 and U6 filings, and a copy of SOFR’s Final Order resolving the matter.

SOFR’s Final Order and the Stipulation and Consent Agreement

In November 2014, SOFR issued its Final Order which adopted its Agreement with Respondent and resolved SOFR’s regulatory action against him. The Final Order incorporated by reference the terms of the Agreement, which Respondent had signed in October 2014. Key among those terms was the one finding that SOFR made and to which Respondent admitted. That finding was as follows:

Respondent engaged in investment advisory business from offices within State without the benefit of lawful registration in State from July 2013, through August 2014, in violation of State Statutes.

The Agreement also included the following background facts:

In July 2014, Respondent applied for registration as an associated person with Firm, a federal covered advisor notice-filed in State. In July 2014, [SOFR] issued a deficiency letter requesting an explanation of Respondent’s investment advisory business activities to determine if he had engaged in investment advisory business services without registration. In response to [SOFR’s] inquiry, Respondent indicated that he had engaged in business from State without registration from July 2013, through August 2014, with the belief that he was properly registered.

With those findings and background facts established, SOFR and Respondent agreed to resolve the regulatory action in the following manner:

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- Respondent agreed to cease and desist from violating State Statutes and SOFR's rules promulgated thereunder;
- Respondent agreed to pay an administrative fine of \$5,000 with the submission of the Agreement; and
- SOFR agreed to approve Respondent's pending application for registration upon receipt of all required payments and entry of the Final Order.

Respondent's Explanation

In his December 2014 letter to CFP Board, Respondent's counsel explained the circumstances that resulted in SOFR issuing its Final Order regarding Respondent. Respondent's counsel stated that Respondent was employed with Firm in State, where he had worked since July 1, 2013. Prior to joining Firm, Respondent had been employed by Firm 2 from April 2008, until July 2013. At Firm 2, Respondent was properly registered as an investment advisor.

According to Respondent's counsel, when Respondent began his employment with Firm, he completed and signed a Form U4 which properly reflected his registration for his investment advisor licenses in State. And, pursuant to Firm policy, Respondent submitted the Form U4 to his supervisor. Thus, Respondent conducted investment advisory services in State from July 2013, through August 2014, believing that he was properly registered, when in fact, his investment advisor registration had not been transferred from Firm 2 due to an apparent clerical error made in Firm's Registration Department.

In closing his letter, Respondent's counsel noted that SOFR did not make any findings that Respondent had caused any client harm or that any clients were prejudiced during Respondent's period without proper registration. Finally, he noted that the Agreement with SOFR includes language that Respondent believed he was properly registered.

In the end, however, by his own admission, Respondent engaged in investment advisory business in State without registration during the period July 2013, through August 2014.

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, during the period July 2013 through August 2014, he engaged in investment advisory business in State without proper registration in violation of State Statutes. Thus, Respondent violated Rule 4.3 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 Rule 4.3 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 Dismissal with Caution.

In reaching its decision, the Commission noted that while Respondent's failure to be registered as an investment advisor was clearly the error of his employer, the Commission cautioned Respondent that he was responsible for making sure that his registrations were complete and that Respondent should have followed up with the registration staff of his employer to ensure everything has been properly filed.

The Commission cited no aggravating factors but considered in mitigation that:

1. The Commission believed that Respondent's conduct was unintentional and was out of his control. Respondent submitted all of the required paperwork, but clerical personnel with his employer failed to properly forward the paperwork necessary to process Respondent's license;
2. When Respondent was informed of the situation, he immediately ceased acting as an investment advisor and transferred his pending business to a licensed person;
3. Respondent indicated in the statement accompanying his settlement offer that State was a "strict liability" state and it did not matter whether his firm was responsible for his failure to register as an investment advisor;
4. Respondent's employer paid the fine;
5. Respondent's clients were not harmed by his failure to register as an investment advisor; and
6. This was Respondent's first disciplinary action.

In arriving at its decision, the Commission consulted Anonymous Case History 28376 and *Sanction Guidelines 27* (Practicing without a Professional License) and 30 (Securities Law Violation).