

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29573

This is a summary of a Settlement Agreement entered into at the October 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 both prior to and after January 1, 2009. The Rules in effect for conduct occurring before January 1, 2009 were Rules 101 through 705 of CFP Board’s *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”). The Rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s *Rules of Conduct*.

I. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he held himself out to the public as a licensed Certified Public Accountant (“CPA”) while he was not licensed as a CPA.

II. Findings of Fact

In August 2013, State Board of Accountancy (“SBOA”) commenced an investigation regarding an anonymous complaint filed against Respondent concerning his unauthorized use of the CPA designation on his website, on his business cards, and in his business email signature. In its letter to Respondent, SBOA stated that Respondent’s CPA license expired in September 2002, and referred to the attached examples of his unauthorized use provided by the anonymous complainant. SBOA ordered Respondent to cease and desist from any use of the CPA designation, and requested that he sign an enclosed Cease and Desist Agreement and provide a letter of explanation.

In September 2013, Respondent responded to SBOA’s letter of August 2013. He explained that he left public accounting in 1987 and hadn’t offered or performed accounting services since that time. Respondent maintained his license and paid his annual licensing fee until 2001, after which he ceased paying his annual fee. Respondent stated that there had never been any intent to deceive or practice accounting without a license. The matter was simply a failure to pursue payment of his annual licensing fee and report continuing education. Respondent added that during this time, he pursued continuing education in connection with his CFP® certification. Respondent also stated that upon receipt of SBOA’s letter, he immediately removed the CPA designation from his website and printed materials. He then requested reinstatement of his CPA designation and attached his application and fee for reinstatement. In September 2013, SBOA emailed Respondent, notifying him that his CPA license had been reinstated.

In October 2013, SBOA sent a letter to Respondent explaining that although they reinstated his CPA license, they still needed to address the issue of his unauthorized use of the CPA designation.¹ SBOA again requested that Respondent sign and return the Cease and Desist Agreement. In October 2013, Respondent signed and returned SBOA’s Cease and Desist Agreement.

¹ According to the SBOA Consent Order, although Respondent had an open complaint regarding unlicensed activity, there was no hold on his record, so the complaint was overlooked and his reinstatement application was approved.

In December 2013, Respondent entered into a Consent Order with SBOA. Without admitting or denying SBOA's findings, Respondent consented to the following: Respondent violated State Code when he allowed himself to be represented as a CPA on his firm's website, on his business cards, and in his business email signature without a valid CPA license because his State CPA license expired in September 2002. SBOA ordered Respondent to pay a monetary penalty of \$1,000. He was also ordered to pay \$500 in investigative costs and to write a 1,000 word essay on the requirements of licensure as an individual CPA.

In his email of May 2015 to CFP Board, Respondent confirmed that he publicly used the CPA designation from the time it expired in 2002 until he was notified by SBOA in August 2013 of his requirement to renew his license.

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 102 of the *Code of Ethics*, which provides that a certificant shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Respondent, a certificant, engaged in conduct involving misrepresentation when, from September 2002 through December 2008, he held himself out to the public as a licensed CPA and he was not. Thus, Respondent violated *Code of Ethics* Rule 102.

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 606(a) of the *Code of Ethics*, which provides that a certificant shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities. Respondent, a certificant, failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when, from September 2002 through December 2008, he held himself out to the public as a licensed CPA and he was not, in violation of State Code. Thus, Respondent violated *Code of Ethics* Rule 606(a).

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 607 of the *Code of Ethics*, which provides that a certificant shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession. Respondent, a certificant, engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when, from September 2002 through December 2008, he held himself out to the public as a licensed CPA and he was not. Thus, Respondent violated *Code of Ethics* Rule 607.

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 2.1 of the *Rules of Conduct*, which provides that a certificant shall not communicate, directly or indirectly, to clients or prospective clients any false or misleading information directly or indirectly related to the certificant's professional qualifications or services. Respondent, a certificant, communicated, directly or indirectly, to clients or prospective clients misleading information directly or indirectly related to the certificant's professional qualifications or services when, from January 2009 through August 2013, he held himself out to the public as a licensed CPA and he was not. Thus, Respondent violated *Rules of Conduct* Rule 2.1.

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 4.3 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. Respondent, a certificant, failed to comply with applicable regulatory requirements governing professional services provided with the client when, from January 2009 through August 2013, he held himself out to the public as a licensed CPA and he was not, in violation of State Code. Thus, Respondent violated *Rules of Conduct* Rule 4.3.

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 6.5 of the *Rules of Conduct*, which provides that a certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession. Respondent, a certificant, engaged in conduct which reflects adversely on his integrity or fitness as a certificant, upon the CFP® marks, or upon the profession when, from January 2009 through August 2013, he held himself out to the public as a licensed CPA and he was not. Thus, Respondent violated *Rules of Conduct* Rule 6.5.

IV. Discipline Imposed

The Commission found grounds for discipline under Article 3(a) of CFP Board's *Disciplinary Rules*. The Commission found that Respondent's conduct violated Rules 102, 606(a) and 607 of the *Code of Ethics* and Rules 2.1, 4.3 and 6.5 of the *Rules of Conduct*. 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 reaching its decision, the Commission identified the following mitigating factors:

1. Respondent had no prior CFP Board disciplinary history;
2. Respondent's conduct resulted in no client harm; and
3. Respondent was cooperative during the course of CFP Board's investigation and process.

The Commission noted in aggravation that Respondent failed to pay his annual CPA fees for more than 10 years.

The Commission consulted *Sanctions Guideline* 35 (Unauthorized Use of Designations) and reviewed *Anonymous Case History* 23714.