

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29666

This is a summary of a decision issued following the October 2015 hearings of the Disciplinary and Ethics Commission (“Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The Initial Application for Certification (“Application”) in this case was filed after September 14, 2012. CFP Board’s *Fitness Standards for Candidates and Professionals Eligible for Reinstatement* (“*Fitness Standards*”) were in effect at that time.

I. Issue Presented

Whether a candidate for CFP® certification could be certified when he copied clients’ signatures from signed insurance documents that had been emailed to him onto hard copies of the documents without the clients’ knowledge or authorization, which violated his firm’s policies, Financial Industry Regulatory Authority, Inc. (“FINRA”) rules and state law.

II. Findings of Fact Relevant to the Commission’s Decision

In April 2015, Respondent disclosed in his renewal application his involvement in the following matters: 1) a 2009 RIA Termination/Permission to Resign; and 2) a 2010 Financial Industry Regulatory Authority, Inc. (“FINRA”) Letter of Acceptance, Waiver and Consent (“AWC”) in which he consented to a three-month suspension and a \$5,000 fine. In May 2015, CFP Board mailed to Respondent a Notice of Investigation (“NOI”) and requested additional information from Respondent. Respondent responded to the NOI in May 2015 by providing a statement and documents responsive to CFP Board’s requests.

Respondent stated that in 2009, he had been permitted to resign from RIA after violating company protocol related to the handling of client correspondence and insurance application signatures. Respondent also stated that in addition to the FINRA investigation, he was also investigated by insurance departments in the states of State 1, State 2 and State 3. Respondent is a State 3 resident who conducts insurance business in all three states. Respondent provided information and documents regarding the events leading to his RIA Termination/Permission to Resign, the FINRA AWC and the investigations conducted by State 1, State 2 and State 3.

RIA Investigation

Respondent was registered with RIA as a Financial Representative from February 2005 to December 2009. Respondent, an independent contractor, was contracted to Managing Director KP. Respondent’s Managing Partner was CP who is the Agency Supervisor and CP’s supervisory delegate is GW, the Director of Network Office Supervision. In October 2009, a RIA staff member at KP’s office contacted GW regarding a potential signature discrepancy that was discovered on an Insurance Service Account (“ISA”) form that Respondent had submitted for one of his clients, KO.

During the relevant period, RIA’s policy was that applications must contain original signatures on hard copies of all documents related to insurance applications. The insurance company did not accept signed application documents that had been scanned or electronically transmitted.

The above-mentioned staff member reported to KP that, in October 2009, she observed an unsigned ISA form for client KO on Respondent's desk, but noted that when the form was turned in for processing in October 2009, it had purportedly been signed by KO. Knowing that KO resided out of state (in State 1), and, recognizing that the ISA form showed no evidence of having been sent through the mail or faxed, the staff member notified KP and brought the matter to GW's attention. A call placed to KO confirmed that he had not signed any forms within the previous two weeks although he had applied for the life insurance coverage in question and sent the signed forms to Respondent via email.

In October 2009, Respondent called GW to inquire into why his client had been contacted and GW explained the reason for the client contact and the concerns at issue. During the conversation, Respondent informed GW that while he may have asked KO to sign blank forms, he had not signed KO's name to the ISA form in question.

In October 2009, a teleconference was scheduled between Respondent, KP, GW and the Assistant Director of Network Office Supervision. Prior to the teleconference, Respondent contacted KP and admitted to signing KO's name on the ISA form. During the teleconference, Respondent apologized to GW for not initially being truthful and admitted to a practice of sending applications or signature pages to clients by either mail or email. Respondent explained that if he received a signed form via email, he would trace the client's signature onto an original application document for submission to the underwriters. Respondent also admitted that there had been occasions when some clients signed their spouses' names on certain insurance documents in his presence.

In his letter of October 2009 to GW detailing his conduct, Respondent listed five clients (including KO) for which signature violations had occurred and three sets of clients where one spouse signed the other spouse's name to documents in his presence. Respondent contends that all of these incidents involved clients and prospects who did not reside in the immediate area and were unavailable for immediate signatures. The procedure Respondent followed after getting a client to agree to purchase insurance was to:

- a. Send the client the application by mail or email;
- b. Complete the entire application by telephone and write the clients' responses on his copy;
- c. Instruct the clients to sign the appropriate pages of the application on their copies;
- d. Have the clients send him their signed copies by email or regular mail;
- e. If the applications were sent via email, Respondent would trace the clients' signatures onto his hard copies and use their signatures as guides to produce the appearance of an original signature on his copies; and
- f. Submit the application for underwriting review.

Respondent contends that although the clients were unaware that he was tracing or forging their signatures, he never signed a document for a client who did not know they were applying for insurance. Respondent admitted that he took the above-mentioned steps in order to expedite the application process and wrongly justified his bad decisions by telling himself that he was helping the clients. Respondent contends that this conduct was not typical of his interactions with clients and that on many occasions he sent and received applications by regular mail.

After the teleconference on October 26, 2009, between Respondent and his supervisors, JR of RIA's Market Conduct division was assigned to investigate Respondent's matter. JR stated that after reviewing email correspondence between Respondent and the clients Respondent identified in the letter of October 2009 to GW, he discovered evidence that Respondent sent applications to some of the clients by email, but could not confirm whether the signatures had been forged or traced. JR asked GW to have the clients in question contacted by a financial representative to review their policies and applications to ensure the clients did not have any concerns. JR stated that, during GW's and his staff's review of business submitted by Respondent, they identified potential signature discrepancies on various application documents. JR arranged for Policy Record Audit letters to be sent to Respondent's former clients, but no additional compliance issues surfaced as a result of the audit.

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In October 2009, RIA decided to ask Respondent to sign a mutual termination agreement after he admitted to forging KO's signature and tracing other clients' signatures onto insurance documents. In November 2009, Respondent and KP terminated their contract by mutual agreement.

In December 2009, RIA notified FINRA and several states where Respondent was registered to conduct business of Respondent's termination after he admitted to forging or tracing clients' signatures to expedite the application process for non-variable insurance products.

FINRA Investigation

In October 2010, following an investigation, Respondent entered into an AWC with FINRA. Without admitting or denying the findings, Respondent consented to allegations that between June 2009 and October 2009, Respondent copied five clients' signatures from signed insurance documents that had been emailed to him onto hard copies of the documents without the clients' knowledge or authorization. Respondent subsequently submitted the falsified signatures to the insurance company, representing them to be authentic. During the relevant period, RIA's policy prohibited the use of scanned or electronically transmitted documents that contained signatures of applicants for insurance. The insurance company would only accept original signed documents. Respondent's conduct violated FINRA Rule 2010, which states that a member in the conduct of its business shall observe high standards of commercial honor and just and equitable principles of trade. Respondent consented to a three-month suspension from association with any FINRA member firm and a \$5,000 fine.

State 1 Department of Insurance Investigation

In January 2010, the State 1 Department of Insurance ("State 1") opened an investigation into Respondent's conduct concerning clients' signatures while he was employed with RIA. In January 2010, Respondent responded to the State 1 inquiry letter. In March 2010, State 1 sent another request for information to Respondent asking whether the clients had been aware that he was signing their names to the applications, and if so, requested that he have the clients provide letters stating that this was done with their approval. In his response dated March 2010 to State 1's request letter of March 2010, Respondent stated that although the clients were not aware that he was signing their names to the original documents, they were aware that they were applying for insurance coverage because they had previously emailed him signed copies of their applications. Respondent stated that he was trying to assist KO, a State 1 resident, in expediting the application process. Respondent also stated that KO was the only State 1 resident whose signature had been forged or traced.

In April 2010, State 1 asked RIA to verify Respondent's statements to them. In April 2010, RIA verified Respondent's statement to State 1. In May 2010, State 1 completed its investigation and took no action against Respondent.

State 3 Department of Commerce and Insurance Investigation

The State 3 Department of Commerce and Insurance also opened an investigation into Respondent's conduct, but closed the investigation in August 2010 and took no action against Respondent.

State 2 Office of Financial and Insurance Regulation Investigation

The State 2 Office of Financial and Insurance Regulation ("State 2") opened an investigation into Respondent's conduct upon receiving notification of Respondent's termination/permission to resign from RIA. In July 2010, Respondent entered into a consent order and stipulation with State 2 ("State 2 Order"). The State 2 Order found that: 1) in a letter dated October 2009 to RIA, Respondent admitted that he "wrongly made the decision to sign

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documents on behalf of certain clients;” 2) in January 2010, RIA informed State 2 that Respondent admitted to “forging and tracing clients’ signatures to expedite the application process for non-variable insurance products;” and 3) although no consumers were harmed, Respondent’s conduct violated several State 2 statutes. Respondent was ordered to cease and desist from further violations of State 2 statutes and agreed to pay the State 2 a \$1,250 fine.

III. Commission’s Determination on Respondent’s Fitness

Under CFP Board’s *Fitness Standards*, conduct that is presumed to be unacceptable may bar an individual from becoming certified unless the individual petitions the Commission for consideration and the Commission grants the petition. Upon consideration of the facts in this matter, the Commission granted Respondent’s Petition for Consideration after determining Respondent’s conduct did not reflect adversely on his fitness, upon the profession or the CFP® certification marks.

In reaching its decision, the Commission noted that while Respondent violated company policy and made a poor decision to assist clients with their insurance applications, he was doing so to expedite the process and complete the wishes of his clients. Respondent testified that he has ceased this practice and now follows all company protocols. The Commission also noted that Respondent uses the knowledge he gained from his CFP® educational coursework to follow the financial planning process when working with his clients even though he is licensed only to sell insurance. Respondent also testified that he plans to use his education to work as part of team of other professionals.

The Commission noted in mitigation that:

1. Respondent’s conduct did not result in client harm;
2. The event in question occurred seven years ago; and
3. Respondent was remorseful and contrite.

The Commission did not cite any aggravating factors.

The Commission reviewed Anonymous Case Histories 26150 and 22166.