

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29667

This is a summary of a decision issued following the June 2016 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. Issues Presented

Whether a candidate for CFP® certification could be certified when she: 1) operated a place of business in State without disclosing the address to the State Securities Division and by not filing a uniform branch office registration form reflecting the additional business location; 2) failed to maintain accurate and complete financial statements and audit working papers related to her investment advisory business; 3) failed to cooperate with CFP Board’s investigation of her conduct; and 4) used the CFP® marks when she was not authorized to do so.

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

Conduct Giving Rise to a Presumptive Bar to CFP® Certification

In September 2013, the State Division of Securities (“State Securities Division”) conducted an examination of Respondent’s investment advisory firm, Company. Following its examination, the State Securities Division mailed a deficiency notice letter to Respondent regarding errors in Company’s Form ADV Parts 1 and 2, and Company’s failure to maintain accurate and complete financial statements. The State Securities Division received the letter back on November 19, 2013 marked, “Return to Sender, Unclaimed.” Subsequently, the State Securities Division sent the letter to Respondent via email and fax. Respondent did not respond to the emailed and faxed notices.

In February 2014, the State Securities Division called Respondent and left a detailed voicemail message regarding the need to address the deficiencies. In February 2014, Respondent called the State Securities Division and stated that she thought she had responded to the notice and would do so as soon as possible. By March 2014, the State Securities Division had still not received any response from Respondent and called her again. In March 2014, Respondent sent an emailed response to the State Securities Division that included copies of her firm brochure and client-advisor contract. Respondent also asked the State Securities Division whether the firm’s 2003 tax information would suffice for the financial statement requirement.

In March 2014, the State Securities Division responded that Respondent had failed to address any of the deficiency issues raised in the October 2013 notice letter. The State Securities Division suggested that Respondent obtain assistance from an accountant regarding the response to the deficiency notice letter.

In March 2014, the State Securities Division sent Respondent a letter summarizing the sequence of events that had transpired between the State Securities Division and Respondent since the notice letter was mailed to her in October 2013. The State Securities Division again listed the outstanding deficiencies: (a) errors in Company’s Form ADV Parts 1 and 2 regarding assets under management (“AUM”); (b) the firm brochure indicated that Respondent was licensed with an additional broker-dealer when she had not been registered with any broker-dealer since 2012; (c) Respondent had not made any amendments to the Investment Adviser Registration Depository (“IARD”) since 2012; (d) Respondent’s contract for clients did not include a required non-assignment clause; and (e) Respondent had not provided any financial statements to the State Securities Division.

In April 2014, Respondent responded to the State Securities Division via email with several attachments that included an adviser-client agreement, an updated firm brochure and Company's compliance manual. Several deficiencies remained outstanding until May 2014. These deficiencies were: (a) the brochure still contained an incorrect date; (b) the ADV Part 2A did not disclose Company's AUM; (c) Respondent did not provide any financial statements; and (d) the policy manual needed correction.

In May 2014, Respondent submitted a revised profit and loss statement to the State Securities Division via email. The statement contained the following problems: (a) it did not list any investment advisory fees as income; (b) income was classified as uncategorized; and (c) a large amount of expenses were listed as uncategorized and appeared in the negative, causing the total expenses to be negative and ultimately causing net income to exceed revenue.

In June 2014, the State Securities Division issued a *Subpoena Duces Tecum* and *Ad Testificandum* (subpoena to provide all necessary financial statements and standard examination documents and appear for testimony) to Respondent for July 2014. Respondent appeared at the appointed time, but failed to produce complete and accurate financial statements and standard examination documents. Respondent stated that she was in the process of retaining an accountant to help her produce the financial statements and the State Securities Division extended her deadline to July 2014. By the July 2014 deadline, Respondent still had not retained an accountant.

In June 2014, the State Securities Division issued a Notice of Opportunity for Hearing and a Notice of Intent to Suspend or Revoke Respondent's and Company's State investment advisor representative and investment advisor licenses.

In November 2014, Respondent entered into a consent agreement with the State Securities Division. The State Securities Division determined that Respondent violated the following State statutes concerning books and records:

- State Administrative Code by operating a place of business in State without disclosing the address to the State Securities Division and by not filing a uniform branch office registration form ("Form BR") reflecting the additional business location.
- State Administrative Code by failing to maintain accurate and complete financial statements and audit working papers related to her investment advisory business.

Pursuant to State law the State Securities Division suspended Company's investment advisor license and Respondent's investment advisor representative license for 20 days beginning on the date of the consent order. Respondent's suspension was effective for 20 days in November 2014.

Respondent failed to notify CFP Board of her professional discipline within the required time period. Respondent also represented to CFP Board in the Declaration Section of her Application that she had never: 1) had a professional license suspended or revoked; and 2) been the subject of a governmental agency or self-regulatory organization inquiry or investigation.

Respondent's Failure to Cooperate with CFP Board

Respondent submitted a Reinstatement Application for CFP® Certification to CFP Board in March 2015. While conducting a routine background check, CFP Board discovered that Respondent was involved in a 2014 State Division of Securities Regulatory Action, which resulted in a 20-day suspension of her investment advisor representative license.

In May 2015, CFP Board opened an investigation into the matter pursuant to Article 6.1 of the *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”) of CFP Board’s *Standards of Professional Conduct* (“*Standards*”) and mailed a Notice of Investigation (“NOI”) to Respondent requesting specific information relating to the 2014 State Division of Securities Regulatory Action. In May 2015, CFP Board received Respondent’s NOI response. In June 2015, CFP Board requested additional information from Respondent, which based on the record in this matter Respondent did not provide.

In June 2015, CFP Board sent a request for additional information (“RFAI”) to Respondent. In June 2015, Respondent sent an email to CFP Board acknowledging receipt of the RFAI and stated that her attorneys would respond on her behalf. Respondent did not respond to the RFAI by the June 2015 deadline. In June 2015, CFP Board sent an email to Respondent as a courtesy to remind her that her response to the RFAI was overdue and inform her that failure to provide the requested information may give rise to an adverse inference with respect to the underlying subject matter. Respondent failed to respond to the June 2015 reminder email or the June 2015 RFAI. In June 2015, CFP Board sent a Second Request letter to Respondent via certified mail along with a copy of the original June 2015 RFAI. Respondent failed to respond to the Second Request letter within the 20-day deadline, which was in July 2015.

In July 2015, CFP Board mailed to Respondent, via certified mail, a Notice. Respondent’s response deadline was September 2015.

In August 2015, Respondent emailed CFP Board to ask if CFP Board had received any communication from her attorney regarding the June 2015 RFAI and stated that her late response was due to illness and death in her family. CFP Board responded to Respondent’s email in August 2015 and informed Respondent of the Notice that it mailed to her in July 2015. CFP Board also informed Respondent that a certified mail notice had been left for her in July 2015 and requested that she retrieve the package as soon as possible due to deadlines she had to meet. Respondent did not respond to CFP Board’s August 2015 email. In September 2015, CFP Board sent another email to Respondent, noting both her failure to retrieve the July 2015 Notice and her failure to respond to the August 2015 email. CFP Board informed Respondent that the deadline for submitting her petition was September 2015.

In September 2015, Respondent responded to CFP Board’s September 2015 email and requested that CFP Board email her a copy of the Notice because she was unable to retrieve the package from the post office as it was no longer available. CFP Board emailed a copy of the Notice to Respondent on the same day and again reminded her of the September 2015 deadline. Respondent did not submit her petition by the deadline.

In September 2015, Respondent requested an additional 30 days to respond to the June 2015 RFAI and asked for her case to be continued to the February 2016 Hearings. CFP Board granted Respondent’s request for an extension of time to respond to the June 2015 RFAI and informed her that her case was continued to the February 2016 Hearings.

In December 2015, CFP Board mailed a Notice to Respondent’s address of record. Respondent requested, and received, a continuance to respond to the Notice mailed in December 2015. In April 2016, Respondent filed her Petition for Consideration in response to the Notice mailed in December 2015. That same day, Respondent responded to the June 2015 RFAI.

Respondent’s Unauthorized Use of the CFP® Marks

Respondent has been in a “Not Certified” certification status since her certification expired in November 2014. Since her certification expired, Respondent has engaged in the unauthorized use of the CFP® marks in her online profiles, including Financial Planning Association website and on LinkedIn.

III. Commission's Determination on Respondent's Fitness

Under the *Fitness Standards*, Respondent had the burden to demonstrate that her conduct does not reflect adversely on her fitness for CFP® certification, the profession or the CFP® marks.

The Commission determined that Respondent's conduct reflected adversely on Respondent's fitness for certification, on the profession and on the CFP® marks. The Commission noted that Respondent displayed a consistent pattern of lack of follow-up on notices with the State Securities Division and CFP Board. Her suspension for 20 days with the State Division was a result of lack of organization and competency to operate a registered investment adviser. Respondent also entered false answers on her reinstatement application and let her CFP® marks lapse after receiving several notices due to the fact that she failed to complete all of continuing education when her renewal was due. Respondent's current work situation has not changed since she left her last business and started her registered investment adviser. Any attempts to find employment with a firm were unsuccessful.

Respondent has the option to re-apply in one year. The Commission would like to see Respondent demonstrate her fitness, willingness to adhere to the *Standards* and ability to perform. Consistent reporting of her continuing education ("CE") will demonstrate this ability so that she can be recommended to the public. Therefore, during this year delay Respondent must complete a minimum of one credit hour of remedial education in any topic every month. Respondent must report the remedial education credit hours she has completed in each month to CFP Board by midnight on the last day of every month until the month she reapplies for reinstatement. Failure to report remedial education in any month as specified will result in the permanent denial of reinstatement of Respondent's certification.

The Commission cited the following as mitigating factors:

1. Respondent's conduct resulted in no client harm;
2. Respondent displayed no malice in her behavior; and
3. Respondent's circumstances included a new adoption, being diagnosed with an autoimmune disease, the death of her father-in-law and having to place her mother-in-law in a nursing home.

The Commission emphasized the value and appreciation they have regarding Respondent's altruistic efforts to provide pro-bono financial planning in places of need. The Commission also appreciated her enthusiasm to spread the word about the Financial Planning profession. Her volunteer efforts in the community are noted and appreciated but these initiatives do not eliminate the imperative to be competent, follow the rules, and be organized to be able to hold the CFP® marks.

The Commission cited the following as aggravating factors:

1. Respondent did not take responsibility for her behavior;
2. Respondent displayed a lack of understanding of CFP Board's *Standards*;
3. Respondent provided false responses on her Reinstatement Application. When asked about her answers, Respondent said she did not know that her registered investment adviser license was a professional license; and
4. Respondent allowed her marks to lapse due to lack of CE credits taken before the deadline.

The Commission consulted *Anonymous Case Histories* 28383, 21319, 29845, and 22622 in reaching its decision.

Respondent's Petition for Consideration is hereby denied. Respondent may re-apply for CFP® certification after August 2017.