

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29801

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 conduct at issue in this case occurred after January 1, 2009. The Rules in effect at that time under the *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) accepted customer checks made payable to him personally; 2) failed to disclose outside business activities to his Firm; 3) failed to disclose his professional suspension to CFP Board within 30-calendar days; and 4) falsely represented on his CFP Board ethics declaration that his professional license had never been suspended and he had never been terminated for cause.

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

Firm terminated Respondent in April 2014, for violating Firm policies prohibiting acceptance of client checks made payable to an advisor, requiring disclosure of outside business activities, and requiring logging of incoming mail, checks, and securities.

In February 2015, the Financial Industry Regulatory Authority, Inc. (“FINRA”) accepted Respondent’s Letter of Acceptance, Waiver and Consent (“AWC”), pursuant to which Respondent was suspended from association with any FINRA member in any capacity for one month. In the AWC, FINRA made the following findings:

Pursuant to FINRA Rule 3270, Firm had procedures in place that prohibited representatives from engaging in outside business activities without prior notice and approval from the Firm. Notwithstanding these procedures and the Rule, from March 2013 through December 2013, [Respondent] provided financial planning services to seven (7) customers and received directly from the customers \$6,150 in compensation for his services. [Respondent] failed to disclose the financial planning services to Firm as an outside business activity, and therefore failed to receive Firm’s approval for the activity.

FINRA Rule 3270 provides that “no registered person may . . . be compensated . . . from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member . . .” In failing to provide notice to Firm of the financial planning services discussed above, [Respondent] violated FINRA Rules 3270 and 2010.

Due to his demonstrated inability to pay, FINRA did not impose a fine.

Respondent admits that he was “guilty” of “accepting client checks made payable to [him]” and “not disclosing it as an outside business activity.” Respondent further admits that he knew the rules and that his conduct was wrong.

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Respondent was obligated to disclose his professional discipline to CFP Board in writing within 30 days. Respondent did not do so. In May 2015, CFP Board discovered, on its own initiative, that Respondent had been suspended.

In April 2015, two months after FINRA suspended him and one month after Firm terminated him, Respondent executed his CFP Board Ethics Declaration declaring “under penalty of perjury and peril of fraud” that the representations he had made on the declaration were true and complete, including his representation, in response to ethics declaration questions Nos. 3 and 8, that his professional license had never been suspended and he had never been terminated for cause.

III. Commission’s Analysis and Conclusions Regarding 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 5.1 of the *Rules of Conduct*, which provides that a certificant shall perform professional services with dedication to the lawful objectives of the employer and in accordance with CFP Board’s *Code of Conduct*. The Commission determined that Respondent failed to perform professional services with dedication to the lawful objectives of his employer, in violation of Rule 5.1, when he engaged in the conduct set forth above that violated Firm’s Compliance Manual and led to his termination from Firm. The Commission’s determination is supported by Article 13.1 of the *Disciplinary Rules*, which provides that a letter or other writing from a governmental or industry self-regulatory authority to the effect that a Respondent has been the subject of an order of professional discipline by such authority shall conclusively establish the existence of such professional discipline for purposes of disciplinary proceedings and shall be conclusive proof of the basis for such discipline by the Respondent. As defined in Article 13.4 of the *Disciplinary Rules*, professional discipline “shall include the suspension, bar or revocation as disciplinary measure by . . . [an] industry self-regulatory organization or professional association.” FINRA is an industry self-regulatory authority. The AWC is an order of professional discipline by FINRA, and Respondent is the subject of that order. Therefore, the AWC conclusively establishes the existence of such discipline for purposes of this disciplinary proceeding and is conclusive proof of the basis for such discipline by the Respondent. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

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 6.1 of the *Rules of Conduct*, which provides that a certificant shall abide by the terms of all agreements with CFP Board. The Commission found that Respondent failed to abide by the terms of his agreement with CFP Board, in violation of Rule 6.1, when he falsely reported to CFP Board in his April 2015 CFP Board Ethics Declaration that he had never received a professional suspension or been terminated from employment for cause. Thus, Respondent violated Rule 6.1 of the *Rules of Conduct*.

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 6.5 of the *Rules of Conduct*, which provides that a certificant shall not engage in conduct that reflects adversely on his integrity or fitness as a certificant, upon the CFP® marks, or upon the profession. The Commission found that Respondent engaged in conduct that reflects adversely on his integrity and fitness as a certificant, upon the CFP® marks, and upon the profession, in violation of Rule

6.5, when (a) he violated Firm's Compliance Manual and FINRA's Rules, and (b) he falsely reported to CFP Board, in his April 2015 CFP Board Ethics Declaration, that he had never received a professional suspension or been terminated from employment for cause. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

Fourth Ground for Discipline

Pursuant to Article 3(d) of the *Disciplinary Rules*, there are grounds to discipline Respondent for any act that is the proper bases for professional discipline. The Commission found that Respondent engaged in acts that are the proper basis for professional discipline, in violation of Article 3(D), when he violated FINRA Rules 2010 and 3270. As discussed above, the FINRA AWC is conclusive proof that FINRA suspended Respondent for violating FINRA Rules 2010 and 3270.

IV. Discipline Imposed

Pursuant to Article 4.2 of the *Disciplinary Rules*, the Commission issued the Respondent a Public Letter of Admonition. The Commission considered in mitigation that Respondent admitted that he was guilty of accepting checks made out to him.

The Commission considered as aggravating factors that Respondent called CFP Board to disclose his conduct but did not disclose it on his subsequent CFP Board Renewal Application and that he instructed clients that it was acceptable to make payment checks out to him directly.

In arriving at its decision, the Commission consulted Anonymous Case Histories 25939, 27835 and 28828. The Commission also consulted *Sanction Guidelines* 12 (Employer Policy Violation), 14(a) (Failure to Disclose to CFP Board), 32 (Professional Discipline Involving a Suspension of Up to One Calendar Month) and 30 (Securities Law Violation).