

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29802

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

I. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when she was the subject of a Financial Industry Regulatory Authority, Inc. (“FINRA”) regulatory action and a 2008 customer complaint.

II. Findings of Fact

In May 2015, the CFP Board discovered that Respondent was the subject of a FINRA regulatory action and a 2008 customer complaint. CFP Board sent a Notice of Investigation to Respondent. Respondent did not provide a response. In July 2015, CFP Board sent a second request for response via certified mail. Respondent responded on July 2015.

In March 2015, Respondent entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with FINRA. In the AWC, Respondent consented to the entry of findings that, while employed at WS, she conducted most of her insurance business through, and received most of her insurance commissions from, EM beginning in December 2010. However, Respondent did not disclose her outside business activity with EM to WS until October 2014 despite the fact that WS’ written supervisory procedures required this disclosure. Respondent’s conduct violated FINRA Rules 3270 and 2010. FINRA suspended Respondent in all capacities for 45 days and fined her \$5,000.

Article 13.1 of the *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”) 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 a disciplinary measure by any governmental agency, industry self-regulatory organization or professional association.”

The FINRA AWC is an order of professional discipline 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.

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 4.3 of the *Rules of Conduct*, which provides that a certificant shall comply with applicable regulatory requirements governing professional services provided to the client. The FINRA AWC is conclusive proof that Respondent engaged in outside business activity without providing notice to her firm and receiving approval for the outside business activity, in violation of FINRA Rules 3270 and 2010. Therefore, the Commission found that Respondent violated Rule 4.3 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 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 Ethics*. The FINRA AWC is conclusive proof that Respondent engaged in outside business activity without providing notice to her firm and receiving approval for the outside business activity, in violation of her firm's written supervisory procedures. Therefore, the Commission found that Respondent violated Rule 5.1 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 and fitness as a certificant, upon the CFP® marks and upon the profession. The FINRA AWC is conclusive proof that FINRA suspended and fined Respondent for violating her firm's policies and FINRA Rules. The public sanctions and violative conduct reflect adversely on Respondent's integrity and fitness as a certificant, upon the CFP® marks and upon the profession. Therefore, the Commission found that Respondent violated Rule 6.5 of the *Rules of Conduct*.

Fourth Ground for Discipline

Pursuant to Article 3(E) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Article 13.2 of the *Disciplinary Rules*, which provides that a Respondent, upon being the subject of professional discipline, shall notify CFP Board in writing of such professional discipline within 30 calendar days after the date on which the Respondent is notified of the conviction. Respondent received notice of the AWC, a professional discipline, in March 2015. Respondent did not disclose the professional discipline to CFP Board. CFP Board discovered the professional discipline in May 2015. Therefore, the Commission found that Respondent violated Article 13.2 of the *Disciplinary Rules*.

IV. Discipline Imposed

The Commission found that Respondent violated Rules 4.3, 5.1 and 6.5 of the *Rules of Conduct*, which provided grounds for discipline under Articles 3(a) and 3(e) of CFP Board's *Disciplinary Rules*. Based on the Findings of Fact and Grounds for Discipline, the Commission issued to Respondent a Public Letter of Admonition, pursuant to Article 4.2 of the *Disciplinary Rules*.

The Commission identified the following mitigating factors:

1. Respondent's conduct did not cause harm to clients;

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2. Respondent had no prior disciplinary history;
3. The following language in Respondent's firm's compliance manual may have led to confusion regarding your reporting requirements:

Q. For insurance business, do I need to submit multiple OBAQs for each agency I put business through? A. No. In this case, the OBA is the ability to sell the particular type of insurance regardless of the number of agencies the insurance business is put through. However, if you own multiple agencies and other persons are sending business to those agencies, then each agency is a separate business and would therefore require a separate OBAQ; and

4. Respondent represented that she received guidance from her supervisor that she did not need to report separately the insurance business of EM.

The Commission did not identify any aggravating factors.

The Commission consulted *Sanctions Guidelines* 12 (Employer Policies Violation) and 17 (Failure to Respond to CFP Board), Conduct 14(a) (Failure to Disclose to CFP Board), 30 (Securities Law Violation), 33 (Professional discipline as defined in Article 13.6 involving a suspension for more than one calendar month (30 days) and less than three calendar months (90 days)). The Commission also consulted Anonymous Case History 27791.