

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 29948

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This is a summary of a Settlement Agreement entered into at the June 2016 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. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when (a) he copied drivers licenses of “extraordinary persons” in violation of State law, (b) State criminally convicted him of a misdemeanor, which resulted in a felony charge from State, (c) he failed to promptly disclose to Firm 1 that he had been charged with a felony, (d) he failed to amend his Form U4, in violation of Financial Industry Regulatory Industry, Inc. (“FINRA” formerly known as the National Association of Securities Dealers or “NASD”) Rule 2010 and NASD Rule 3070(b), (e) the State Securities Division concluded that Respondent was not of “good business repute” and denied Respondent’s State securities salesperson license and investment adviser representative license applications, (f) Firm 1 terminated Respondent’s employment because of his criminal indictment, and (g) Firm 2 terminated Respondent’s employment due to the State Securities Division’s Order of Denial.

II. Findings of Fact

*2009 State Criminal Conviction*

In June 2009, the Deputy Registrar of the State Bureau of Motor Vehicles (“BMV”) filed a Complaint alleging that Respondent, an authorized Deputy Registrar of BMV, knowingly gained access to or caused access to be gained to the computer system of the BMV beyond the scope of the express or implied consent of the BMV, or a person authorized to give consent, and used the computer system to make unauthorized reprints of State driver’s licenses and identification cards.

Respondent was involved in the practice of duplicating driver’s licenses of “extraordinary” persons (local celebrities, athletes and politicians). State criminally charged Respondent with an Unauthorized Use of Property felony, which it later reduced to an Attempted Possession of Criminal Tools misdemeanor. In August 2009, Respondent was found guilty following his no contest plea. In December 2009, State sentenced Respondent to 120 days in jail, which was suspended on the conditions that he: (a) commit no criminal offense for the next three years; (b) complete at least 120 hours of community service; (c) complete psychological counseling; and (d) serve three years of probation. State ordered Respondent to pay a fine of \$1,000, court costs of \$155, a probation fee of \$30 and a community service fee of \$15. Pursuant to a court order, in March 2015, Respondent’s 2009 State criminal conviction was expunged and the records were sealed.

*2009 Termination from Employment*

In addition to serving as an authorized Deputy Registrar for BMV, Respondent was employed by Firm 1, which terminated Respondent’s employment in October 2009. Respondent represented that Firm 1 terminated him because of the State criminal indictment.

### *2009 FINRA Investigation*

In October 2009, shortly after Respondent's termination from Firm 1, FINRA issued a Cautionary Action Letter to Respondent. FINRA found that Respondent failed to promptly disclose to Firm 1 his June 2009 felony charge and failed to amend his Form U4, as required by FINRA's rules. FINRA cited Respondent with violating FINRA Rule 2010 and NASD Rule 3070(b).

### *2010 State Department of Commerce, Division of Securities Investigation*

In March 2010, in response to Respondent's application to the State Department of Commerce, Division of Securities ("State Securities Division") for investment adviser representative and securities salesperson licenses, the State Securities Division notified Respondent of its intent to deny the applications.

The State Securities Division convened a hearing in August 2010 with all parties in attendance. Respondent contended during the hearing that he and other BMV clerks had duplicated the driver's licenses of famous person for training purposes. Respondent also contended that his training manager made a duplicate of SW's license to train a new hire. However, the State Securities Division found that Respondent admitted that it was he who had copied SW's license. Moreover, the new hire testified that the license was not copied for training purposes, and that Respondent tried to persuade her to falsely vouch for his story, but she refused.

The Hearing Officer issued a Report and Recommendation concluding that the State Securities Division established a sufficient evidentiary basis for denying, and recommended that the State Securities Division deny, both license applications. Respondent filed no objections to the Report and Recommendation.

In November 2010, the State Securities Division concluded that Respondent was not of "good business repute" under State Administrative Code, and denied Respondent's State securities salesperson license and investment adviser representative license applications. The State Securities Division found that Respondent lacked a reputation for honesty, integrity and competence based on his criminal conviction for attempted possession of criminal tools and his long-standing practice of maintaining an unauthorized collection of surrendered and reprinted State driver licenses. The State Securities Division found that Respondent had engaged in the unauthorized reprinting of driver's licenses from 2006 through 2008. Respondent's untruthful testimony during the hearing regarding his conduct also reflected negatively on his reputation.

### *2010 Termination from Employment*

Respondent became registered with Firm 2 in January 2010. Firm 2 terminated Respondent in December 2010 because he was denied registration by State.

### *2012 State Department of Insurance Civil Penalty for Failing to Disclose the Criminal Conviction*

The State Department of Insurance ("State Insurance Department") found that Respondent failed to notify the State Superintendent of Insurance of his criminal prosecution within 30 days after his initial appearance before a judge or magistrate. In March 2012, the Superintendent ordered Respondent to pay a civil penalty of \$2,000 and \$250 in administrative costs.

### *Respondent's Failure to Disclose to CFP Board*

On his CFP Board Renewal Applications in 2010, 2012, and 2014, Respondent falsely represented that he had no reportable events to disclose to CFP Board. Respondent failed to disclose both the State criminal conviction and the State Securities Division Investigation on his 2010, 2012, and 2014 CFP Board Renewal Applications. On his

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2012 and 2014 CFP Board Renewal Applications, Respondent failed to disclose his termination from employment with Firm 1 and Firm 2, the FINRA Investigation, and the State Insurance Department Investigations.

Respondent also failed to disclose to CFP Board in writing his criminal conviction within 30 calendar days after the date on which he was notified of the conviction, as required by Article 13.2 of the *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”). Respondent’s criminal conviction was brought to CFP Board’s attention through an anonymous complaint filed against him. According to Respondent, “The lack of reporting to the CFP Board of the entire chain of events is the irrelevance of the initial charge and lesser conviction to the financial industry.”

### 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 6.2 of the *Rules of Conduct*, which provides that a certificant shall meet all CFP Board requirements, including continuing education requirements, to retain the right to use the CFP® marks.

Respondent failed to meet all CFP Board requirements when he failed to disclose to CFP Board: (a) his criminal conviction and the State Securities Division’s Investigation and Order on his 2010, 2012 and 2014 CFP Board Renewal Applications; and (b) his Firm 1 and Firm 2 terminations, and his FINRA and Department of Insurance Investigations, on his 2012 and 2014 CFP Board Renewal Applications. Thus, Respondent violated *Rules of Conduct* Rule 6.2.

#### *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 6.5 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 engaged in conduct that reflects adversely on his integrity or fitness as a certificant, upon the CFP® marks, or upon the profession when: (a) he copied drivers licenses of “extraordinary persons” in violation of State law, (b) the State criminally convicted him of a misdemeanor, (c) he failed to promptly disclose to Firm 1 that he had been charged with a felony, (d) he failed to amend his Form U4, in violation of FINRA Rule 2010 and NASD Rule 3070(b), (e) he testified falsely to the State Securities Division, and the State Securities Division concluded that Respondent was not of “good business repute” pursuant to State Administrative Code, and denied Respondent’s State securities salesperson license and investment adviser representative license applications, (f) Firm 1 terminated him from employment because of his criminal indictment, and (g) Firm 2 terminated him from employment due to the State Securities Division’s Order of Denial. Thus, Respondent violated *Rules of Conduct* Rule 6.5.

#### *Third Ground of Discipline*

Pursuant to Article 3(e) of the *Disciplinary Rules*, there are grounds to discipline Respondent for “an act or omission that violates these *Disciplinary Rules* or which violates an order of discipline.” Under Article 13.2 of the *Disciplinary Rules*, every CFP® professional who is convicted of a crime, other than minor traffic offenses, must notify CFP Board within 30 calendar days after receiving notification of the conviction.

In August 2009, Respondent was convicted of Attempted Possession of Criminal Tools - a criminal misdemeanor. Respondent failed to report his conviction to CFP Board within the required 30 calendar days. Therefore, Respondent’s omission violates Article 13.2.

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#### IV. Discipline Imposed

Respondent consented to CFP Board's findings that his conduct violated Rules 6.2 and 6.5 of the *Rules of Conduct* and provided grounds for discipline under Articles 3(a) and 3(e) of CFP Board's *Disciplinary Rules*. Pursuant to the terms of the Settlement Agreement, the Commission issued to Respondent a Public Letter of Admonition, pursuant to Article 4.2 of the *Disciplinary Rules*.

The Commission cited in aggravation that:

1. Respondent displayed a pattern of failing to disclose reportable events to his firm and regulators; and
2. Respondent displayed a pattern of failing to make required disclosures to CFP Board over several years.

The Commission noted in mitigation that Respondent had no prior disciplinary actions.

The Commission consulted *Sanctions Guidelines* 12 (Employer Policy Violation), 14(a) (Failure to Disclose to CFP Board) and 30 (Securities Law Violation). The Commission did not rely on any Anonymous Case Histories in reaching its decision.