

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30008

This is a summary of a Settlement Agreement entered into at the February 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. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he failed to amend his Form U4 to disclose his 2010 Chapter 7 bankruptcy until 2013, in violation of the Financial Industry Regulatory Authority, Inc. (“FINRA”) Rules 1122 and 2010

II. Findings of Fact

2010 Bankruptcy

In September 2010, Respondent filed for Chapter 7 bankruptcy in a United States Bankruptcy Court in State. The Court discharged the bankruptcy in January 2011. CFP Board processed Respondent’s bankruptcy through CFP Board’s Bankruptcy Disclosure Procedures and disclosed Respondent’s bankruptcy in a press release in October 2012.

FINRA Letter of Acceptance Waiver and Consent (“AWC”)

FINRA conducted an examination of Respondent’s broker-dealer in March 2013 and inquired as to why Respondent had not updated his Form U4 to disclose his bankruptcy. In April 2013, Respondent filed an amended Form U4 and disclosed his 2010 bankruptcy.

In May 2015, FINRA notified Respondent that it accepted his AWC, in which he agreed to the entry of findings that he failed to amend his Form U4 to disclose his 2010 bankruptcy until April 2013 in violation of Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010. In the AWC, Respondent consented to the imposition of a two-month suspension from association with any FINRA member firm in any capacity.

Respondent did not provide notice to CFP Board of the FINRA suspension. In September 2015, CFP Board discovered Respondent’s FINRA AWC and suspension during its review of FINRA’s Disciplinary and Other FINRA Actions monthly report.

III. Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules and Procedures* (“*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 certificiant shall not engage in conduct that reflects adversely on his or her integrity and fitness as a certificiant, upon the CFP® marks, or upon the profession.

Article 13.1 of the *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 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 that Respondent engaged in the conduct that is the basis for such discipline.

Respondent is a certificant. As stated above, the AWC is conclusive proof that Respondent failed to amend his Form U4 to disclose his 2010 Chapter 7 bankruptcy until 2013, in violation of FINRA Rules 1122 and 2010. Respondent’s violation of FINRA’s rules and his two-month suspension reflect adversely on his integrity and fitness as a certificant, upon the CFP® marks, and upon the profession.

Second Ground for Discipline

Pursuant to Article 3(d) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts that are the proper basis for professional discipline. The acts set forth in the AWC are the proper basis for professional discipline, and the AWC constitutes professional discipline. As detailed in the First Ground for Discipline, the AWC is conclusive proof that there are grounds to discipline Respondent for acts that are a proper basis for professional discipline.

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*, a CFP® professional who receives a suspension of a professional license must notify CFP Board within 30 calendar days after receiving notification of the suspension. In May 2015, FINRA notified Respondent that he was suspended from association with any FINRA member firm in any capacity for two months. Respondent failed to report this suspension of a professional license to CFP Board within the required 30 calendar days. Therefore, Respondent’s omission violated Article 13.2.

IV. Discipline Imposed

The Commission found that Respondent’s conduct violated Rule 6.5 of the *Rules of Conduct* and provided grounds for discipline under Articles 3(a), 3(d) 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 identified the following mitigating factors:

1. Employer policy made it the responsibility of the chief compliance officer (“CCO”) to update U4, not Respondent’s; and
2. Respondent notified other entities of the 2010 bankruptcy in a timely manner, including CFP Board.

The Commission did not identify any aggravating factors.

The Commission felt that the failure to update Respondent's U4 was caused by the oversight of Respondent's CCO, who, per the company's policy manual, had the responsibility to keep the U4 up to date. Respondent notified all other applicable entities, including CFP Board, of his 2010 bankruptcy in a timely manner. The Commission acknowledged, however, that it was Respondent's responsibility to ensure his U4 was correct. According to Respondent he consented to a suspension to avoid having to pay a fine to FINRA. Respondent asserted he would not have been suspended otherwise.

The Commission consulted *Sanctions Guidelines* 14(a) (Failure to Disclose to CFP Board), 30 (Securities Law Violation) and 33 (Professional discipline as defined in Article 13.6 involving a suspension for more than one calendar month). The Commission also consulted Anonymous Case History 28377 in reaching their decision.