

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 30034

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This is a summary of a Settlement Agreement entered into following the June 2016 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 for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s *Rules of Conduct*.

I. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he entered into a settlement with the State Department of Consumer and Business Services Division of Finance and Corporate Securities (“State”), in which State found Respondent charged unreasonable advisory fees on rare coins because he relied on an inaccurate source to value the coins.

II. Findings of Fact

In October 2015, Respondent completed his Renewal Application for CFP® Certification and disclosed that he entered into a settlement with State. State made the following findings of fact in the settlement:

- Since 2007, Respondent has been an investment advisor representative in State for his firm, a state investment advisor. Respondent was a registered representative with three different broker-dealers from 1994 through 2010.
- Between 2007 and 2009, Respondent made recommendations to some of his clients to invest in rare coins. The clients purchased the coins from CSA, a rare coin dealer business owned by GF. As a registered representative, Respondent received commissions when his clients purchased the coins.
- Between 2007 and 2011, Respondent charged management fees to some of his clients for investment advisory services relating to their rare coin investments. The fees were based on the value of the clients’ assets under management.
- Respondent contacted GF every quarter to obtain the value of the coins held in his clients’ accounts. Respondent used the values GF provided to bill his clients. The valuations provided by GF to Respondent were not always accurate.
- Respondent relied on GF’s valuations and did not independently verify the value of the clients’ coins by contacting other appraisers or coin dealers.
- Between 2007 and 2011, Respondent charged one or more clients an unreasonably high advisory fee based on an inflated value of the clients’ rare coins.

Respondent consented to the entry of the aforementioned settlement in which he was ordered to cease and desist from charging unreasonable advisory fees and violating any provision of the state laws and to pay a civil penalty of \$2,500. Respondent also consented to, without admitting or denying, charging a client an unreasonable advisory fee, in violation of State Securities Laws.

### 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 1.4 of the *Rules of Conduct*, which provides that a certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides material elements of financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board.

Respondent is a certificant. By providing investment advisory services to these clients, Respondent provided material elements of financial planning to the clients. 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.” The settlement is conclusive proof that Respondent charged a client an unreasonable advisory fee and also charged clients advisory fees and commissions on the same assets. Therefore, Respondent failed to place the interest of his clients ahead of his own and failed to provide his clients with the duty of care of a fiduciary.

#### *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 4.1 of the *Rules of Conduct*, which provides that a certificant shall treat clients fairly and provide professional services with integrity and objectivity.

Respondent is a certificant. The settlement is conclusive proof that Respondent charged a client an unreasonable advisory fee and, therefore, Respondent treated a client unfairly.

#### *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 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.

Respondent is a certificant. The settlement is conclusive proof that Respondent charged a client an unreasonable advisory fee in violation of state laws, a regulatory requirement governing professional services provided to the client.

### IV. Discipline Imposed

Pursuant to Article 4 of the *Disciplinary Rules*, the Commission must establish grounds for discipline in order to impose discipline or sanctions. Once the Commission has established grounds for discipline, it has wide discretion to impose any sanction under Article 4 of the *Disciplinary Rules*. The Commission determined that Respondent’s conduct violated Rules 1.4, 4.1 and 4.3 of the *Rules of Conduct*, providing grounds for discipline under Article 3(a) of the *Disciplinary Rules*.

Pursuant to the terms of the Settlement Agreement, the Commission issued Respondent a public letter of admonition, pursuant to Article 4.2 of the *Disciplinary Rules*. In addition, Respondent was ordered to complete four credit hours of remedial education in the area of Ethics, which were in addition to the hours required to maintain the CFP® certification.

The Commission cited in aggravation that:

1. Respondent was warned after CFP Board's investigation of his bankruptcy in 2008 of the importance of governing himself in a manner which reflects positively on his integrity and fitness as a CFP Board designee and upon the financial planning profession; and
2. Respondent failed to disclose his settlement with State on his Renewal Application for CFP® Certification.

The Commission did not note any mitigating factors.

The Commission consulted *Sanctions Guidelines* 5 (Breach of Fiduciary Duty), 20 (Misrepresentation to Client) and 30 (Securities Law Violation). The Commission reviewed *Anonymous Case Histories* 29328, 28376 and 29005 in reaching its decision.