

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30197

This is a summary of a decision issued following the February 2017 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 make and/or implement only recommendations that are suitable for the client by recommending and selling an unsuitable investment to a brokerage customer who lost money on an investment he admitted was inconsistent with her goals and objectives.

II. Findings of Fact

KH Customer Complaint

In November 2012, Respondent’s brokerage customer, KH, filed a customer complaint against him, alleging that she lost almost \$6,400 because of Respondent’s inappropriate investment recommendations. According to Respondent, he opened a rollover Investment Retirement Account (“IRA”) for KH and transferred an IRA and part of her retirement plan into the rollover IRA. Respondent later converted the IRA into a Roth IRA, and opened an individual account with \$20,000. Respondent recommended KH invest in a “Green” mutual fund (“Fund”) in the individual account and that she invest her retirement assets in the CAC managed account system. According to Respondent, he described the CAC account, including the charges and expenses involved. Respondent also explained the structure of the CAC program, including that CAC used Exchange Traded Funds to accomplish investment objectives.

After a substantial market decline, KH sent Respondent an email complaining about the decline in her the Fund investment, arguing that the investment was inappropriate for her needs. She also complained that the CAC portfolio was not properly explained to her, and requested that all fees and expenses be reimbursed to her. In his defense, Respondent stated that he explained the CAC investment, including the fees, to KH and that he informed his supervisor at his firm about KH’s complaint. Respondent, however, admitted that the Fund was not consistent with KH’s goals and objectives. Respondent agreed to his firm’s deduction of approximately \$6,500 from commissions owed to him which the firm told him constituted her losses.

Permitted to Resign

In February 2013, Respondent’s firm permitted him to resign for what it alleged was his failure to follow firm policies and procedures. The firm cited Respondent’s failure to report the KH Customer Complaint to the Compliance Department and his supervisor, stating that it was discovered as part of an email review program. In addition, the firm alleged that it discovered that Respondent signed documents on behalf of multiple customers during an internal review.

Respondent disputed the firm’s allegations. Respondent claimed that he never received a copy of KH’s customer complaint and that it was handled exclusively by compliance. Respondent represented that he reported KH’s

complaint to his supervisor after KH called Respondent to inform him that she was moving her account and registering a complaint. He also contends that the firm did not discover that he signed customer signatures through an email investigation. He claims that he volunteered this information to his supervisor. He does not dispute that he signed customer signatures.

FINRA AWC

FINRA sent its initial inquiry letter regarding Respondent's resignation in March 2013. In his April 2013 response to FINRA, Respondent stated that he had been in poor health due to his diabetes; suffered from stress and anxiety due to the market declines of August 2011; and was overwhelmed by the increasing amount of administration necessary to transact business. As a result, Respondent claimed that his judgment was "temporarily clouded" and that he "honestly" believed his customers would permit him to sign their signatures on their behalf. Respondent claimed that he was making an accommodation to his customers when he signed multiple customers' signatures on CAC transfer forms and letters of authorization. Respondent represents that he received no commissions or financial benefit as a result of signing customers' signatures on documents.

In May 2014, FINRA accepted Respondent's AWC in which Respondent accepted and consented to, without admitting or denying, the following findings:

From May through December 2011, Respondent forged the signatures of at least 26 customers on at least 29 account forms.

In October 2012, the firm discovered through routine email review that Respondent had received what the firm considered a written complaint. In the course of its resulting internal investigation of Respondent, the firm determined Respondent had signed customer names on various firm documents, including Letters of Authorization and Transfer of Assets forms used to transfer customer funds into new managed accounts. Respondent signed the forms on behalf of customers after discussing the transfers with the customers, as an accommodation, and with a reasonable belief that he had implied or explicit authorization to sign on behalf of those customers.

By forging customer signatures, Respondent violated FINRA Rule 2010.

Respondent consented to the imposition of the following sanctions: (a) a suspension from association with any FINRA member in any capacity for a period of 12 months; and (b) a \$10,000 fine. Respondent's suspension was effective from June 2014 through June 2015.

Failure to Disclose

Pursuant to Article 13.2 of the *Disciplinary Rules and Procedures* ("*Disciplinary Rules*"), Respondent was obligated to disclose his 2014 professional discipline to CFP Board in writing within 30 days after the date he was notified of his professional discipline. Respondent signed the AWC in May 2014 and FINRA accepted it in May 2014, but Respondent waited until January 2016, approximately seven months after completing his 12-month suspension by FINRA, to disclose the suspension on his 2016 Renewal Application.

In May 2014, the day before he signed the AWC and more than year after KH's 2012 complaint, Respondent executed his 2014 CFP Board Ethics Declaration in which he declared "under penalty of perjury and peril of fraud" that his representations on the declaration were true and complete. Those representations included his responses to questions Nos. 7 and 9 that he had never been the subject of a self-regulatory organization inquiry or investigation and that he had never been the subject of a written customer complaint that led to an investigation by his employer. In January 2016, Respondent, once again, failed to disclose KH's complaint on his 2016 CFP Board Ethics

Declaration when he declared in response to question No. 9 that he had never been the subject of a written customer complaint that led to an investigation by his employer.

With regard to his failure to disclose FINRA's Investigation, Respondent stated that he was not aware that he needed to report any pending proceedings to CFP Board. As to his failure to disclose KH's complaint, Respondent stated that it was an oversight on his part.

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.

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 of that Respondent forged the signatures of 26 customers in violation of FINRA Rule 2010. Respondent also admitted to this conduct. Thus, 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 4.5 of the *Rules of Conduct*, which provides that a certificant shall make and/or implement only recommendations that are suitable for the client.

The Commission determined that Respondent, a certificant, failed to make and/or implement only recommendations that are suitable for the client when he recommended and sold an unsuitable investment to KH, a brokerage customer, who lost money on an investment he admitted was inconsistent with her goals and objectives. His firm withheld the commission to reimburse KH for her loss. The Commission noted that although they lacked the details to determine if the investment was suitable, Respondent admitted the investment was not appropriate. Thus, Respondent violated Rule 4.5 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 5.1 of the *Rules of Conduct*, which provides that a certificant who is an employee/agent shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics*.

The Commission determined that Respondent, a certificant, failed to perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics* when he: (a)

failed to report a customer complaint to his firm; and (b) signed documents on behalf of multiple customers without their authorization. Respondent's firm permitted him to resign for this conduct. The Commission noted that Respondent disputed the failure to report the customer complaint to his firm, but admitted to signing documents on behalf of multiple clients without their authorization. Despite Respondent's denial that he failed to report the customer complaint to his firm, the Form U5 filed by the firm in this case is sufficient evidence that Respondent violated his firm's policies and procedures with regard to disclosing the customer complaint. Thus, Respondent violated Rule 5.1 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 acts that are the proper basis for professional discipline. The acts set forth in the AWC are the proper basis for professional discipline, and Respondent's FINRA suspension constitutes professional discipline. Therefore, the AWC is conclusive proof that there are grounds to discipline Respondent for acts that are a proper basis for professional discipline.

Fifth Ground for 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 receives a suspension of a professional license must notify CFP Board within 30 calendar days after receiving notification of the suspension. In May 2014, Respondent signed the AWC agreeing to a 12-month suspension and a \$10,000 fine. Respondent, a certificant, failed to report the suspension of a professional license to CFP Board within 30 calendar days and instead waited until January 2016, to report it on his Renewal Application. Therefore, Respondent's failure provided grounds for discipline under Article 3(e) of the *Disciplinary Rules*.

Sixth Ground for Discipline

Pursuant to Article 3(g) of the *Disciplinary Rules*, there are grounds to discipline Respondent for "any false or misleading statement made to CFP Board." Respondent made false statements to CFP Board when he: (a) answered "No" to all nine questions of his 2014 Renewal Application, when, in fact, he should have disclosed the 2013 FINRA Investigation and KH's 2012 customer complaint; and (b) answered "No" to question No. 9 on his 2016 Renewal Application, when, in fact, he should have disclosed KH's 2012 customer complaint. Therefore, there were grounds to discipline Respondent under Article 3(g) of the *Disciplinary Rules*.

IV. Discipline Imposed

The Commission determined that Respondent's conduct violated Rules 4.3, 4.5 and 5.1 of the *Rules of Conduct*, providing grounds for discipline under Articles 3(a), 3(d), 3(e) and 3(g) of the *Disciplinary Rules*. Upon consideration of the facts presented, the Commission issued to Respondent a 12-month suspension of his CFP® certification pursuant to Article 4.3 of the *Disciplinary Rules*.

In arriving at its decision, the Commission consulted *Sanction Guidelines* 12 (Employer Policies Violation), 14(a) (Failure to Disclose to CFP Board), 19 (Forgery), 30 (Securities Law Violation), 31 (Suitability Violation) and 34 (Professional Discipline of More than Three Months). The Commission also consulted *Anonymous Case Histories* 27322 and 22961. The Commission noted that the sanction of a 12-month suspension is consistent with the *Sanction Guidelines*, *Anonymous Case History* 27322 and FINRA's 12-month suspension.

The Commission cited in mitigation that:

ACH 30197

- 4 -

1. Respondent was conciliatory with respect to his conduct;
2. Respondent suffers from significant health issues; and
3. Respondent received no economic benefit from signing documents on behalf of his clients.

The Commission considered in aggravation that Respondent forged signatures of 26 clients on 29 separate accounts and submitted two CFP Board renewal forms containing false statements.