

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30255

This is a summary of a Settlement Agreement entered into 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. Rules 1.1 through 6.5 *Rules of Conduct* were in effect.

I. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he participated in private securities transactions by investing and facilitating investments for six other investors, including clients without providing his firm with written notice of, or receiving approval to participate in, the private securities transactions.

II. Findings of Fact

Respondent was registered with broker-dealer ABC from November 2002 to August 2014, when Respondent resigned from ABC. Following his resignation from ABC, Respondent joined broker-dealer XYZ in August 2014, where he was registered until January 2016. In September 2014, ABC filed a Form U5 for Respondent reporting that he was “Permitted to Resign” in August 2014. On the Form U5, ABC disclosed that the reason for his termination was “[r]egistered representative failed to obtain prior approval to assist clients with investments not approved by the firm in violation of firm policy. Registered representative disputes this conclusion.”

In September 2014, FINRA sent Respondent its initial letter notifying him that it was investigating the circumstances surrounding his resignation from ABC. Ultimately, Respondent chose to resolve the matter by signing a Letter of Acceptance, Waiver and Consent (“AWC”) with the Financial Industry Regulatory Authority, Inc. (“FINRA”, formerly known as the National Association of Securities Dealers or “NASD”) in which he agreed to a four-month suspension and a \$10,000 fine. In the AWC, FINRA made the following findings:

From January 2013 to August 2014, [Respondent], while registered with ABC, participated in private securities transactions by investing, and facilitating investments for six other investors in a private company [“PC”]. [Respondent], along with these six investors, invested a total of \$435,000 in [PC] through an outside investment vehicle [called PC Partners, LLC (“PC Partners”) formed by [Respondent]. [Respondent] did not provide his Firm with written notice of, or receive approval to participate in, these private securities transactions. As a result of the foregoing, [Respondent] violated NASD Rule 3040 and FINRA Rule 2010.

Respondent signed the AWC in December 2015, and in January 2016, FINRA accepted it.

Respondent, who insists that he neither solicited investors nor received compensation for any investments in the company, states that in late 2012 a close personal friend and client told him about an investment opportunity in PC, a private start-up company. Around the same time, he learned that another friend had also decided to invest in PC. Ultimately, he learned that four other individuals, two of whom were also his personal friends, had decided to invest in PC. Since none of their individual investments met the threshold investment amount set by PC, Respondent’s

friend setup PC Partners, completed the Articles of Organization, and Respondent and his friend both signed the Articles of Organization.

After PC Partners was formed, the individual investors wrote their checks directly to PC for their respective investments in the company. As with that initial investment, whenever opportunities to invest more money in PC arose, each individual in PC Partners determined if and how much he or she wanted to invest in the company.

Respondent admitted that he occasionally attended PC meetings with one or two members of PC Partners, and sometimes he passed along an inquiry from a “friend/client” to the PC principles. He also passed information or documents from the PC principles to a “friend/client,” but he claims that the communications were done as a friend, usually through email. Further, he admits to executing a promissory note and purchase agreement related to the investments, but he insists that he only intended to sign on his own behalf, not for PC Partners.

According to Respondent, prior to his participation in any PC transactions, he sought oral approval from ABC’s compliance department for his PC investment. Respondent represents that the compliance department told him it had no objection and told him he had to complete and submit an Outside Business Activity (“OBA”) Report. As instructed, he submitted the OBA Report in January 2013.

Respondent, however, admitted he failed to disclose the precise nature of his PC investment in the OBA Report. He did not disclose that his investment in PC would be made through PC Partners or that ABC clients were also participating in the investment.

Respondent represents that after submitting the OBA Report to ABC’s compliance department, he did not receive a written response approving or rejecting the OBA Report, so he proceeded with the PC investment based upon what he interpreted was the compliance department’s “oral assurance” that he could proceed with the transaction. Later, Respondent learned that, in May 2014, ABC’s compliance department had rejected his request to participate in the PC investment.

Respondent represented that he understood that he did not satisfy FINRA’s written notice requirement for participating in the PC transactions.

Pursuant to Article 13.2 of the *Disciplinary Rules*, Respondent was obligated to disclose his professional discipline to CFP Board in writing within 30 days. Respondent failed to do so. On or about March 16, 2016, CFP discovered that FINRA had suspended him.

In November 2014, over two months after he resigned from ABC and FINRA notified him of its investigation, Respondent executed his CFP Board Ethics Declaration declaring “under penalty of perjury and peril of fraud” that the representations he made on the declaration were true and complete. Those representations included his in responses to questions Nos. 7 and 8 that he had never been the subject of a governmental or self-regulatory organization inquiry or investigation and that he had never been permitted to resign when the cause of the resignation involved allegations relating to compliance. Both representations were false. When questioned about these false representations, Respondent conceded that he should have disclosed his resignation from ABC and the FINRA inquiry. He claimed that he did not intend to mislead CFP Board.

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 4.3 of the *Rules of Conduct*, which provides that a

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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 the basis for such discipline by the Respondent. Thus, Respondent, a certificant, failed to comply with NASD Rule 3040 and FINRA Rule 2010 when he participated in private securities transactions by investing and facilitating investments for six other investors, including clients, in PC without providing his firm with written notice of, or receiving approval to participate in, the private securities transactions. 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 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*.

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 participated in private securities transactions by investing and facilitating investments for six other investors, including clients, in PC without providing his firm with written notice of, or receiving approval to participate in, the private securities transactions. Thus, Respondent violated Rule 5.1 of the *Rules of Conduct*.

Third 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.

Fourth 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. On December 9, 2015, Respondent signed the AWC agreeing to a four-month suspension and \$10,000 fine. Respondent, a certificant, failed to report the suspension of a professional license to CFP Board in writing within 30 calendar days. Therefore, Respondent’s failure violates Article 13.2 and provides grounds for discipline under Article 3(E).

Fifth 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 question No. 7 on his November 17, 2014 CFP Board Ethics Declaration, when, in fact, he should have answered “Yes” and disclosed the FINRA Investigation, which had recently begun; and (b) answered “No” to question No. 8 on his November 17, 2014 Ethics Declaration, when, in fact, he should have answered “Yes” and disclosed that he was “Permitted to Resign” from CIR following allegations that he had violated firm policy. Therefore, there are grounds to discipline Respondent under Article 3(G).

IV. Discipline Imposed

The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact and Grounds for Discipline. Pursuant to the terms of the Settlement Agreement, the Commission issued to Respondent a suspension of his right to use the CFP® certification for five months pursuant to Article 4.3 of the *Disciplinary Rules*. CFP Board will publish the suspension in a press release and on its website. The publication will include, but not be limited to, the discipline and a description of the facts underlying the discipline.

In arriving at its decision, the Commission consulted *Sanction Guidelines* 12 (Employer Policies Violation), 14(a) (Failure to Disclose to CFP Board), 30 (Securities Law Violation) and 34 (Professional Discipline Involving a Suspension of More than Three Months). The Commission also consulted *Anonymous Case Histories* 26226 and 30060.

The Commission cited the following aggravating factors:

1. Respondent had prior disciplinary history with CFP Board and received a private censure related to a 2006 State Securities Division Consent Order and a related customer complaint;
2. Respondent failed to disclose his AWC to CFP Board in writing; and
3. Respondent provided false and misleading information to CFP Board on his Ethics Declaration form.

The Commission considered in mitigation that Respondent’s conduct resulted in no client harm and that no clients elected to rescind the investment. Respondent also received no compensation for his role.