

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30274

This is a summary of a Settlement Agreement entered into at 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 twice represented his compensation method as “fee-only” on CFP Board’s “Find a CFP® Professional” search tool even though he: (a) was a licensed broker who is entitled to receive commissions; (b) was an insurance producer licensed to sell insurance products for commissions until September 2015; (c) earned commissions during the relevant period from September 2013 through July 2015; and (d) referred clients to related parties who earn commissions on product sales.

II. Findings of Fact

In August 2013, CFP Board issued a Notice to CFP® Professionals (“Notice”) regarding the importance of accurate compensation disclosures to clients. The purpose of the Notice was to remind CFP® professionals of both the scope of the term “compensation” and the obligation to make accurate disclosures of compensation methods on all public websites, including on related-party websites, public search engines, and public disclosure forms including the Form ADV.

CFP Board’s *Standards of Professional Conduct* provide that “A certificant may describe his or her practice as “fee-only” if, and only if, all of the certificant’s compensation from all of his or her client work comes exclusively from the clients in the form of fixed, flat, hourly, percentage or performance-based fees.” Compensation, as defined by CFP Board, includes “any non-trivial economic benefit, whether monetary or non-monetary, that a certificant or related party receives or is entitled to receive for providing professional activities.” CFP Board defines “commission” as “compensation generated from a transaction involving a product or service and received by an agent or broker, usually calculated as a percentage on the amount of his or her sales or purchase transactions. This includes 12b-1 fees, trailing commissions, surrender charges and contingent deferred sales charges.”

The Notice provided that if the CFP® professional works for a registered investment adviser that is under common ownership with a broker-dealer, CFP Board considers the broker-dealer to be a related party. Therefore, any CFP® professional working for an organization that has a broker-dealer subsidiary or affiliate must include ‘commission’ as part of his/her compensation disclosure.” The Notice stated that a CFP® professional may not describe his compensation as “fee-only” if the CFP® professional or a related party receives commissions.

In 2013, Respondent stated his compensation method as “fee-only” on CFP Board’s “Find a CFP® Professional” search tool. In September 2013, CFP Board removed the “fee-only” description from Respondent’s “Find a CFP® Professional” search profile.”

In September 2013, CFP Board sent to Respondent an “Action Required” email informing him that it had removed the “fee-only” description from his “Find a CFP® Professional” search profile. The email asked Respondent to carefully review CFP Board’s compensation disclosure rules and definitions and to update his search profile with

the description that accurately reflects his compensation method. In September 2013, Respondent again selected “fee-only” as his compensation method on CFP Board’s “Find a CFP® Professional” search tool.

Respondent was employed with ABC Advisors, Inc. (“ABC”) as a wealth advisor from April 2010 until his resignation in September 2015. Respondent was licensed as an insurance producer to sell life, health and variable contracts insurance until September 2015 when his license expired. Respondent represented that he received commissions while working as a wealth advisor at HFA. He received a 10% commission on the first year’s premiums for referrals, with 90% going to the agent that wrote the business. Respondent represented that the amount of referral commission he received was minimal in comparison to his overall salary and incentive compensation. According to Respondent, his commissions generally totaled approximately \$1,000 per year. Respondent also reported that he did not receive any trails for the 2013, 2014 and 2015 period. Respondent represents that in 2015, he did not receive any commission income from securities or brokerage business. Respondent further reported that when he left his former employer, “any and all commissions due were negated.”

Respondent had no active appointments with any insurance company at the time of entry into the Settlement Agreement. He did, however, have active appointments with insurance companies while he was employed with ABC from April 2010 through September 2015.

Respondent is currently employed with XYZ Securities, Inc. (“XYZ”), where he is registered as a broker. XYZ earns commissions from selling products and services. Respondent represented that as a Wealth Strategist with XYZ, he is compensated for a wide range of services through a comprehensive assets-under-management fee schedule. Respondent contended that he receives a base salary and incentive compensation related to discretionary or custodial fees. Respondent also contended that he and his colleagues receive no commission for these services. The firm does, however, earn commissions on products and services sold through other employees, including stocks, bonds and mutual funds. Respondent also receives referral fees for recommendations to employees of XYZ.

With respect to the fact that he continues to hold Series 7 and Series 66 securities registrations with XYZ, Respondent states that “[T]his is done as a professional service though I do not place securities/brokerage business myself in my current role as a Wealth Strategist.” Respondent said that if a client needs brokerage services, he refers them to other XYZ brokers, but receives no commission or other compensation for the referrals. Respondent later admitted that he receives referral fees for client referrals to XYZ with 25% of the first-year revenue applied to Respondent’s incentive compensation gird.

Respondent represented that bonuses are a major part of his incentive compensation plan at XYZ, but he also said, contradictorily, that the bonuses were minimal and represented no more than a few hundred dollars per year. He said that in the last few years his salary has ranged from \$125,000 to \$150,000. Respondent also represented that the bonuses are generated from investment management fee revenues, bank deposits and loans, estate plans, financial planning engagements where only a fee was paid, and insurance and business referrals.

In July 2015, CFP Board again removed the “fee-only” description from Respondent’s “Find a CFP® Professional” search profile. Since that time, Respondent has not identified any compensation structure on CFP Board’s “Find a CFP® Professional” search tool.

III. Grounds for Discipline

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 2.1 of the *Rules of Conduct*, which provides that a certificiant shall not communicate, directly or indirectly, to clients or prospective clients any false or misleading

information directly or indirectly related to the certificant's professional qualifications or services. A certificant shall not mislead any parties about the potential benefits of the certificant's service. A certificant shall not fail to disclose or otherwise omit facts where that disclosure is necessary to avoid misleading clients.

The Commission found that Respondent, a certificant, twice represented his compensation method as "fee-only" on CFP Board's "Find a CFP® Professional" search tool even though he: (a) is a licensed broker who is entitled to receive commissions; (b) was an insurance producer licensed to sell insurance products for commissions until September 2015; (c) earned commissions during the relevant period from September 2013 through July 2015; and (d) referred clients to related parties who earn commissions on product sales. Respondent affirmed and agreed with these findings. Thus, Respondent violated Rule 2.1 of the *Rules of Conduct*.

IV. Discipline Imposed

The Commission found that Respondent's conduct violated Rule 2.1 of the *Rules of Conduct* and provided grounds for discipline under Article 3(a) 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*.

In arriving at its decision, the Commission consulted *Anonymous Case Histories* 28295, 29231, 29235 and 29221. The Commission also consulted *Sanction Guideline* 20 (Misrepresentation to Clients). The Commission noted that because Respondent personally received commission compensation while using "fee-only" a Public Letter of Admonition was the appropriate outcome.

The Commission considered in mitigation that Respondent had no prior disciplinary action.

The Commission considered in aggravation that Respondent twice represented his compensation structure as "fee-only" on CFP Board's website.