

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 30320

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This is a summary of a Settlement Agreement entered at the October 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 processed a variable life insurance settlement exchange transaction through an outside firm without the approval of his firm.

II. Findings of Fact Relevant to the Commission’s Decision

Respondent was first certified as a CFP® professional in June 1986, and he has maintained his certification since that date.

In 2009, while employed by MLS, Respondent arranged through CFL, a life settlement company, for clients to exchange a portion of a variable universal life insurance policy for which the clients no longer had a need. MLS did not approve the transaction.

In May 2010, MLS Securities permitted Respondent to resign, citing a violation of Financial Industry Regulatory Authority, Inc. (“FINRA”) Conduct Rule 3040 - Private Securities Transactions of an Associated Person. Respondent contended, through counsel, that this transaction did not involve a security, and therefore, Rule 3040 did not apply.

In June 2010, FINRA informed Respondent that it was investigating the matter that led to his resignation.

In March 2011, FINRA issued Respondent a letter in which FINRA determined that Respondent failed to comply with Rule 2010 Standards of Commercial Honor and Principles of Trade because he failed to follow the procedures of MLS, in that the transaction was not approved by, or transacted through, MLS. FINRA did not address the alleged Rule 3040 violation.

In April 2012, Respondent renewed his CFP® certification. Respondent answered “no” to the following questions (the “Renewal Application Questions”): (a) Have you, or any organization over which you have exercised control, ever been the subject of a governmental agency or self-regulatory organization inquiry or investigation? (b) Have you ever been terminated for cause or permitted to resign in lieu of discipline when the cause of the termination or resignation involved allegations relating to compliance, honesty or ethical considerations? Respondent’s answers were false.

In March 2014, Respondent again renewed his CFP® certification. He again answered “no” to the Renewal Application Questions. Respondent’s answers were false.

In March 2016, Respondent renewed his CFP® certification and disclosed his 2010 MLS resignation and FINRA investigation.

III. Commission’s Analysis and Conclusions Regarding Rule Violations

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### *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 certificant shall comply with applicable regulatory requirements governing services provided to the client.

Respondent is a certificant. The March 2011 letter from FINRA is conclusive proof that Respondent failed to comply with FINRA Rule 2010, which is a regulatory requirement governing professional services provided to the client.

### *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 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 his employer/principal when he violated firm policy by processing a variable life insurance settlement exchange transaction through an outside firm.

### *Third 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, a certificant, made false and misleading statements to CFP Board on his 2012 and 2014 Renewal Applications, when he answered “no” to the Renewal Application Questions. Respondent failed to provide truthful information to CFP Board in the Renewal Applications, after declaring under penalty of perjury that his representations were true and complete. Respondent’s failure to disclose was intentional.

#### 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*. Pursuant to the terms of the Settlement Agreement, Respondent’s conduct violated Rules 4.3 and 5.1 of the *Rules of Conduct*, which provided grounds for discipline under Articles 3(a) and 3(g) of the *Disciplinary Rules*. The Commission issued Respondent a private censure pursuant to Article 4.1 of the *Disciplinary Rules*.

In arriving at its decision, the Commission consulted *Anonymous Case Histories* 22895 and 28379. The Commission also consulted *Sanction Guideline* 14(a) (Failure to Disclose).

The Commission considered in mitigation that:

1. FINRA did not comment on the original alleged Rule 3040 violation;
2. Respondent’s conduct resulted in no client harm; and
3. Respondent had a clean Form U4 history.

The Commission considered in aggravation that Respondent did not disclose his conduct to CFP Board for five years.