

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30456

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 engaged in securities transactions on behalf of clients without his employer’s approval.

II. Findings of Fact

In February 2013, Respondent became registered with ABC, a FINRA-regulated broker-dealer, as a General Securities Representative. His association with ABC ended in August 2014. In August 2014, Respondent became registered with XYZ, a FINRA-regulated broker-dealer, as a General Securities Representative. XYZ terminated Respondent in December 2014.

In June and July 2014, while employed at ABC, Respondent assisted 11 investors with the purchase of a total of 128,627 shares of stocks and warrants in a public company through a private investment in a public equity (“PIPE”) transaction. The PIPE transaction took place in July 2014, and the customers collectively invested over \$836,000. Respondent assisted investors with their purchases of the stock and warrants by: (i) researching and sharing information about the PIPE transaction; (ii) answering investor questions; (iii) making recommendations regarding the investment to certain investors, and (iv) transmitting the investment paperwork to and from investors.

Three of the 11 investors were customers of ABC at the time of the transactions. Respondent was offered a referral fee, amounting to 3% of the investments he solicited, or approximately \$25,000, if he could meet certain conditions, which included having his employing broker-dealer sign an agreement. But no broker-dealer ever signed the agreement, and as a result, Respondent never collected the fee. The transactions were outside the regular course and scope of Respondent’s work and he did not receive the requisite written approval from his broker-dealer.

In August 2014, during Respondent’s first month of employment at XYZ, he became involved with a limited liability limited partnership (“LLLP”). The LLLP was formed by (i) Respondent, as general partner; (ii) a XYZ customer, and (iii) one other individual, in order for the XYZ customer to make anonymous investments. In August 2014, Respondent assisted the LLLP with making one investment that was executed away from XYZ.

The investment was the purchase of a \$50,000 equity interest in a manager-managed LLC, which was outside the regular course and scope of Respondent’s employment with XYZ. Respondent participated in the transaction by identifying, researching, and recommending the investment opportunity to the LLLP. The LLLP’s investment was a securities transaction. Respondent did not disclose his involvement with the LLLP or the investment to XYZ. Respondent also did not provide XYZ with prior written notice.

When FINRA investigated his conduct, Respondent claimed in both instances that he communicated with his broker-dealers and informed them of his dealings. Respondent represented the same to CFP Board.

In March 2016, Respondent entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with the Financial Industry Regulatory Authority, Inc. (“FINRA”, formerly known as the National Association of Broker-Dealers or “NASD”) for his violation of NASD Rule 3040 and FINRA Rule 2010 as discussed above. In the AWC, Respondent accepted and consented to, without admitting or denying, a nine-month suspension from association in any capacity with any FINRA member firm and a \$10,000 fine. Respondent signed the AWC in March 2016. FINRA accepted the AWC and notified Respondent that it accepted it in April 2016. Respondent failed to notify CFP Board about his FINRA suspension in writing within 30 days of being notified about it.

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 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. As set forth in the AWC, Respondent failed to comply with NASD Rule 3040 and FINRA Rule 2010, which are regulatory requirements governing professional services provided to the client. Therefore, the Commission found that Respondent violated Article 3(A) of the *Disciplinary Rules* and Rule 4.3 of the *Rules of Conduct*.

Second 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 the AWC is conclusive proof of those acts.

Third 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*. 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 April 2016, FINRA notified Respondent that FINRA suspended Respondent from association in any capacity with any FINRA member firm for nine months and a \$10,000 fine. Respondent failed to report this suspension of a professional license to CFP Board within the required 30 calendar days. Therefore, Respondent’s omission violates Article 13.2 of the *Disciplinary Rules*.

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 10 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.

The Commission consulted *Sanctions Guidelines* 14(a) (Failure to Disclose to CFP Board), 30 (Securities Law Violation) and 34 (Professional Discipline as Defined in Article 13.1). The Commission also consulted *Anonymous Case Histories* 26226 and 24809 in reaching its decision.

The Commission cited in aggravation that:

1. Respondent entered multiple engagements without the proper clearance from his employer;
2. Respondent was terminated by his firm for his conduct; and
3. Respondent failed to disclose his conduct to CFP Board.

The Commission noted in mitigation that Respondent had no prior disciplinary history and his conduct resulted in no client harm.