CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30337

This is a summary of a decision issued following the February 2018 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 prior to January 1, 2009. The Rules in effect at that time under the *Code of Ethics and Professional Responsibility* ("Code of Ethics") were Rules 101 through 705.

I. Issues Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: (1) made unsuitable investments on behalf of his client—resulting in an overconcentration of the client's principal—which was in contradiction to the client's risk tolerance and investment goals; and (2) failed to disclose the related FINRA arbitration settlement to CFP Board.

II. Findings of Fact

2010 Customer X FINRA Arbitration

In June 2010, Customer X filed a FINRA Arbitration Statement of Claim against Respondent, Respondent's broker-dealer, ABC ("ABC"), and a registered investment advisory firm, DEF ("DEF"), which Respondent owned at the time and still owns today. Customer X was widowed in 2001 after her husband was killed by a drunk driver. She was 44 years old at the time with two sons, Son Y, 6 years old, and Son Z, 11 years old. After her husband's death, she invested the proceeds from her husband's life insurance policies totaling between $800,000 and $1,000,000 with her parents' financial advisor ("Advisor"). She also had her own IRA account valued at approximately $90,000. Advisor retired in 2004 and Respondent purchased his financial advisory practice in late 2004 or early 2005.

In December 2005, Customer X settled with the drunk driver's insurance company for $2 million. The settlement was allocated among three trusts: a) $1.3 million to the Customer X Living Trust; b) $400,000 to the Son Y Living Trust; and c) $300,000 to the Son Z Living Trust. Customer X told Respondent that she knew very little about investing, and she would rely on him to determine the amount of risk she should take with her investments. DEF's Wealth Management Agreement indicated Customer X's risk tolerance to be conservative. Customer X also told Respondent that he would have to manage her money so that she could live off of that money for the rest of her life, while supporting her two sons. Customer X testified during the hearing that she knew "nothing about investing ...."

According to ABC's Client Information Form ("Form"), Customer X's investment objectives were "Income" and "Preservation of Capital." As defined on the ABC's Form, an investment objective of Income "indicates you seek to generate income from investments and are interested in investments that have historically demonstrated a low degree of risk or loss of principal value. Some examples of typical investments might include high quality, short and medium term fixed instruments and shorter-term bond funds." An investment objective of Preservation of Capital "indicates you seek to maintain the principal value of your investments that have historically demonstrated a very low degree of risk or loss of principal value. Some examples of typical investments might include money market funds and high quality, short term fixed income instruments."

The Form also indicated that her net worth at the time was over $1 million and that her liquid assets were between $50,000 and $100,000. The Form also indicated that she had an annual income of over $100,000. Customer X testified during the hearing that this income was generated from her investments and wages from employment. The Form also indicated that her general investment knowledge was "Good." In the section for Specific Investment Knowledge, Customer X did not check any boxes indicting that she had knowledge of any financial products.

Customer X alleged that Respondent ignored her investment objectives and, between August 2005 and December 2008, placed over half of her portfolio in highly speculative and illiquid real estate private placements and a hedge fund, Spectrum Equities, LP ("Spectrum"), that was part of the fraud perpetrated by Bernard Madoff. Customer X alleged the portfolio was unsuitable because it was over concentrated in these alternative investments, representing approximately 54.84% of her net worth which was $1,295,452.29 in 2009. The remainder of her portfolio was in cash, a money market fund and a mutual fund portfolio. According to Customer X, Respondent managed all her assets - her cash and investments, except her house and car. She held no other investments elsewhere.

Customer X further alleged that Respondent failed to disclose to Customer X the speculative nature of the investments or their illiquidity. Customer X also stated that Respondent recommended the Spectrum investment but did not disclose that it was a hedge fund or explain to her how hedge funds operate. It was only after Madoff was arrested in December 2008 and the Madoff fraud became public that Respondent informed her that Spectrum was a Madoff-related investment.

Summary of Customer X's Alternative Investments

Customer X IRA:					
Name of Investment	Type of Investment	Date of Investment	Amount of Original Investment	Recommending Advisor	Percent of Total Net Worth
GHI Funding	Real estate debt - mortgage- backed notes	May 25, 2005	$40,000	Respondent	2.63%
JKL Development	Real estate debt - residential properties	October 1, 2006	$40,000	Respondent	3.09%

Customer X Living Trust

Name of Investment	Type of Investment	Date of Investment	Amount of Original Investment	Recommending Advisor	Percent of Total Net Worth
Spectrum Equities LP	Multi-manager hedge fund	October 1, 2007	$250,000	Respondent	7.04%
MNO Funding	Real estate mortgage-baked notes	August 10, 2005	$120,000	Respondent	6.48%
QRS Investment Fund	Commercial real estate	June 13, 2001	$100,000	Advisor	2.79%
TUV Funding Corp.	Real estate debt	July 20, 20001	$200,000	Advisor	15.44%
XYZ Realty LLC	Real estate debt - residential/vacation properties	Assumed to be 2003, per the PPM	$25,000	Advisor	1.93%
Multi-Family Housing Fund	Real estate equity-multi-family housing	October 31, 2007	$50,000	Respondent	3.86%
BBB Century Plaza	Real estate-shopping malls	March 31, 2009	$50,000	Respondent	3.86%
BBB Real Estate Fund	Real estate equity – commercial real estate	December 5, 2007	$50,000	Respondent	3.86%
BBB Southern Inv. LLC	Real estate equity – commercial real estate	Unknown	$50,000	Respondent	3.86%

Further exacerbating the illiquidity of Customer X's portfolio was the existence of approximately $500,000 in loans to Customer X's neighbors. This loan was unsecured and carried an interest rate of 8.5%. At the time of the hearing, the neighbors were not making payments on the loans.

In September 2010, Respondent and DEF filed their Answer to the Statement of Claim. In the Answer, Respondent contended that Customer X was a sophisticated investor who was unable to understand the risks associated with alternative investments. Respondent claimed that Customer X had been investing in private placements before he became her advisor. He also stated that before recommending any investment to Customer X, he carefully discussed its risks and provided her with the private placement memorandum and subscription agreement. According to Respondent, Customer X knowingly approved all the investments.

As to the Spectrum investment, Respondent stated that he and DEF performed substantial due diligence on the fund, including personally meeting with one of the principals of the investment manager for the fund. Respondent asserted that there was no way in 2007 that he could have uncovered that Madoff was perpetrating a fraud. Moreover, Customer X signed the Spectrum Risk Disclosure Form disclosing the fund as a hedge fund and that it may be speculative and illiquid.

In July 2011, Respondent and his firm, DEF, entered into a Settlement Agreement with Customer X. Pursuant to that agreement, they were required to pay her $99,990 and repurchase Spectrum for $10. According to Respondent, the $100,000 represented the then current value of Spectrum, which was a 40% loss of Customer X's $250,000 original investment. In addition, ABC was required to buy back all Customer X's alternative investments for the original purchase price.

After the settlement, ABC placed Respondent under heightened supervision for one year. ABC did not inform Respondent of the heightened supervision until after its completion. Respondent stated that he could not provide any details or documentation regarding what he was required to do or how ABC monitored him.

Respondent Provided Financial Planning for Customer X

Respondent acknowledged that he had performed financial planning services for Customer X, but stated that it was not part of his engagement with Customer X. Respondent admitted to performing the following financial planning services for Customer X:

a. Financial statement preparation and analysis (including cash flow analysis/planning and budgeting):

Respondent completed income and expense forms for Customer X with data that she provided. He also worked on budgeting and cash flow for Customer X and her eldest son, Son Z. Customer X stated that she did not know why Respondent prepared these documents for her, other than she thought he would need to know how much she was spending so he could get a sense of how much income he would need to produce for her. According to Customer X, there was very little discussion regarding these documents. Customer X testified that she needed to know how much she was going to make every month to pay her bills. Customer X also testified that she spoke with Respondent about family, kids, college, and cars if she needed to buy a car.

b. Investment planning (including portfolio design, i.e., asset allocation and portfolio management):

Respondent developed a portfolio for Customer X and her sons. As part of her portfolio, he also created an amortization schedule for a loan Customer X made to a neighbor.

c. Education planning:

Respondent had some discussions with Customer X regarding the costs and cash flow estimates for her sons' trusts, which included college education costs. College education cost assumptions were reached through mutual discussion. According to Customer X, Respondent sent Children Expense Reports to her, but they did not have any discussion about them. Customer X also testified that Respondent did some projections about the cost of her son, Son Y, which included the cost of his current education.

d. Retirement planning:

Respondent performed most of his work for Customer X in this area using Excel. However, he produced the Wealth Confidence Analysis with Crystal Ball, a Monte Carlo simulation software. He also developed a 20-year cash flow projection for Customer X. According to Customer X, she did not know why Respondent provided her with this document, as they had very little discussion about her spending and expenses.

Respondent's Failure to Disclose FINRA Arbitration

Respondent failed to disclose the 2010 Customer X FINRA Arbitration on his 2012 or 2014 CFP Board Renewal Applications. In June 2012, 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 response to question No. 6 that he had never been a defendant or respondent in a civil action including, but not limited to, a lawsuit, arbitration or mediation. This representation was false.

In June 2014, Respondent, once again, executed his CFP Board Ethics Declaration declaring under penalty of perjury that the representations he made on the declaration were true and complete. And once again, he represented in response to question No. 6 that he had never been a defendant or respondent in a civil action including, but not limited to, a lawsuit, arbitration or mediation. As it was in 2012, this representation was false.

Finally, in April 2016, Respondent disclosed the Arbitration to CFP Board. Respondent stated that he did not know why he failed to disclose the Arbitration in 2012 and 2014. He stated his best guess was that he answered "No" to the Arbitration question without reading it carefully. He said his attorney may have told him that he did not need to disclose the matter because it was resolved.

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 201 of the *Code of Ethics*, which provides that a CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.

Respondent, a CFP Board designee, failed to exercise reasonable and prudent professional judgment in providing professional services when he recommended and sold to Customer X, prior to January 1, 2019, unsuitable investments, totaling approximately 55% of her net worth. These investments were over-concentrated in alternative investments and heavily weighted in real estate that overexposed her portfolio to the risks of the real estate market. Taking into account Customer X's age, net worth, income needs, investment objectives, and stated risk tolerances, it was not prudent to have 55% of Customer X's assets in such investments. Customer X was a widow who did not work and needed to support herself and her two sons. She sought a conservative to moderate investment portfolio and appeared to be a relatively unsophisticated investor. For Respondent to sell Customer X the types of investments he did and for those investment to compromise such a large portion of Customer X's portfolio was imprudent. Further, the concentration of those investments in the real estate market was not prudent. While Customer X may have had a significant need for income, Respondent could have tried to achieve that income in a different manner other than an over-concentrated portfolio. For example, he could have constructed a more diverse and liquid portfolio that provided Customer X's needed level of income and the ability to redeem principle, if needed. Respondent could have communicated with the client in a clear manner about budgeting and her spending. Further, if Customer X really was intent on holding such a high overconcentration of illiquid assets, Respondent should have had a clear and understandable conversation with her in which he discussed the negative effect of holding such illiquid assets while continuing her spending habits. The record does not contain any credible information to indicate that Respondent seriously explored these alternative courses of action with Customer X. A CFP® professional exercising reasonable and prudent judgment would have done so in this particular situation. Thus, Respondent violated *Code of Ethics* Rule 201.

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 202 of the *Code of Ethics*, which provides that a financial planning practitioner shall act in the interest of the client.

Respondent, a financial planning practitioner, failed to act in the interest of the client when he recommended and sold to Customer X, prior to January 1, 2009, unsuitable investments totaling approximately 55% of her net worth. These investments were over-concentrated in alternative investments and heavily weighted in real estate that overexposed her portfolio to the risks of the real estate market. As stated in the first ground for discipline, it was not in the interest of Customer X to have such a concentrated portfolio given her specific situation. To act in the interest of Customer X, Respondent would have had to, at the very least, credibly explored alternative courses of action. Thus, Respondent violated *Code of Ethics* Rule 202.

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 607 of the *Code of Ethics*, which provides that a CFP Board designee shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.

Respondent, a CFP Board designee, engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he recommended and sold to Customer X, prior to January 1, 2009, unsuitable investments totaling approximately 55% of her net worth. These investments were over-concentrated in alternative investments and heavily weighted in real estate that overexposed her portfolio to the risks of the real estate market. Further, this level of concentration in illiquid investments made it difficult for Customer X to redeem principle to meet her income needs. Respondent's conduct with respect to Customer X could affect the public's confidence in CFP® professionals who are held out to the public as having expertise with addressing situations similar to that of Customer X. Respondent did not display the level of professionalism and prudence that the public has come to expect of a CFP® professional. Thus, Respondent violated *Code of Ethics* Rule 607.

Fourth 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 703 of the *Code of Ethics*, which provides that a financial planning practitioner shall make and/or implement only recommendations which are suitable for the client.

Respondent, a financial planning practitioner, failed to make and/or implement only recommendations that are suitable for the client when he recommended and sold to Customer X unsuitable investments, totaling approximately 55% of her net worth, that were over-concentrated in alternative investments and heavily weighted in real estate that overexposed her portfolio to the risks of the real estate market. Further, this level of concentration in illiquid investments made it difficult for Customer X to redeem principle to meet her income needs. This was not suitable given Customer X's specific circumstances. Thus, Respondent violated *Code of Ethics* Rule 703.

Fifth Ground for Discipline

CFP Board's Complaint alleged that pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 704 of the *Code of Ethics*, which provides that a CFP Board designee shall make a reasonable investigation regarding the financial products recommended to clients. While the overall construction of Customer X's portfolio was unsuitable, the record did not contain evidence to support the allegation that Respondent, a CFP Board designee, failed to make a reasonable investigation regarding the financial products recommended to clients when he recommended and sold to Customer X unsuitable investments, totaling approximately 55% of her net worth, that were over-concentrated in alternative investments and heavily weighted in real estate that overexposed her portfolio to the risks of the real estate market. Thus, Respondent **did not** violate *Code of Ethics* Rule 704.

Sixth Ground for Discipline

CFP Board's Complaint alleged that pursuant to Article 3(a) of the *Disciplinary Rules*, there were grounds to discipline Respondent for acts or omissions that violate Rule 1.4 of the *Rules of Conduct*, which provides that a certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board. CFP Board dropped this charge at the hearing. Thus, the Commission **did not** make any findings with respect to this Ground for Discipline.

Seventh Ground for Discipline

CFP Board's Complaint alleged that pursuant to Article 3(a) of the *Disciplinary Rules*, there were grounds to discipline Respondent for acts or omissions that violate Rule 2.1 of the *Rules of Conduct*, which provides that a certificant 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. CFP Board dropped this charge at the hearing. Thus, the Commission **did not** make any findings with respect to this Ground for Discipline.

Eighth Ground for Discipline

CFP Board's Complaint alleged that pursuant to Article 3(a) of the *Disciplinary Rules*, there were grounds to discipline Respondent for acts or omissions that violate Rule 4.4 of the *Rules of Conduct*, which provides that a certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients. CFP Board dropped this charge at the hearing. Thus, the Commission **did not** make any findings with respect to this Ground for Discipline.

Ninth Ground for Discipline

CFP Board's Complaint alleged that pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 6.5 of the *Rules of Conduct*, which provides that a certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession. CFP Board dropped this charge at the hearing. Thus, the Commission **did not** make any findings with respect to this Ground for Discipline.

Tenth Ground for Discipline

Pursuant to Article 3(b) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Practice Standard 400-1 which provides that the financial planning practitioner shall consider sufficient and relevant alternatives to the client's current course of action in an effort to reasonably meet the client's goals, needs and priorities.

Respondent provided financial planning and/or material elements of financial planning to Customer X. In making the determination of whether a CFP® professional provided financial planning the Commission looks to the four factors cited in the definition of financial planning. First, the Commission determined that Customer X's understanding and intent in engaging Respondent was for Respondent to provide financial planning services. Customer X worked with Respondent on multiple areas of her financial life and made statements indicating that she was putting her financial life m Respondent's control.

Second, the degree to which multiple financial planning subject areas are involved weighs in favor of the conclusion that Respondent provided financial planning or material elements of financial planning to Customer X. As detailed in the factual findings above, Respondent provided services to Customer X in multiple financial planning subject areas.

Third, the Commission determined there was significant and comprehensive data gathering performed by Respondent. This is evidenced by the numerous financial planning subject areas involved in the engagement. Thus, this factor weighs in favor of Respondent providing financial planning or material elements of financial planning.

Finally, the Commission determined that Respondent's recommendations were of significant depth and breadth. Respondent made recommendations that affected Customer X's entire portfolio and had a significant effect on her income and liquidity. Many of the products in Customer X's accounts were illiquid for substantial periods of time. These factors weighed in favor of Respondent providing financial planning or material elements of financial planning. Thus, the Commission determined that Respondent provided financial planning or material elements of financial planning to Customer X.

Respondent, a financial planning practitioner, failed to consider sufficient and relevant alternatives to the client's current course of action in an effort to reasonably meet the client's goals, needs and priorities when he recommended and sold several illiquid alternative investments to Customer X, a risk-averse investor. Respondent's recommendations left Customer X with a portfolio that lacked diversification and was over-concentrated in these investments. While Customer X may have had a significant need for income, Respondent could have tried to achieve that income in a different manner other than an over-concentrated portfolio. For example, he could have constructed a more diverse portfolio that provided Customer X's needed level of income. Respondent could have communicated with the client in a clear manner about budgeting and her spending. Further, if Customer X really was intent on holding such a high overconcentration of illiquid assets, Respondent should have had a clear and understandable conversation with Customer X in which he discussed the negative effect of holding such illiquid assets while continuing her spending habits. The record does not contain any credible information to indicate that Respondent seriously explored these alternative courses of action with Customer X. A CFP® professional exercising reasonable and prudent judgment would have done so in this particular situation. Therefore, Respondent violated Practice Standard 400-1.

Eleventh Ground for Discipline

Pursuant to Article 3(b) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Practice Standard 400-3 which provides that the financial planning practitioner shall communicate the recommendation(s) in a manner and to an extent reasonably necessary to assist the client in making an informed decision.

Respondent, who was a financial planning practitioner as discussed above, failed to communicate the recommendation(s) in a manner and to an extent reasonably necessary to assist the client in making an informed decision when he failed to fully disclose the risks and illiquidity of the alternative investments he recommended to Customer X, resulting in her uninformed decision to invest in products that were unsuitable for her. There was no credible evidence in the record to indicate that Respondent had a clear and understandable conversation with Customer X about the risks she was incurring in her portfolio and the alternatives available to her. Therefore, Respondent violated Practice Standard 400-3.

Twelfth Ground for Discipline

Pursuant to Article 3(b) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Practice Standard 500-2 which provides that the financial planning practitioner shall select appropriate products and services that are consistent with the client's goals, needs and priorities.

Respondent, who was a financial planning practitioner as discussed above, failed to select appropriate products and services that were consistent with the client's goals, needs, and priorities when he recommended and sold several illiquid alternative investments to Customer X, a risk-averse investor. Respondent's recommendations left Customer X with a portfolio that lacked diversification and was over-concentrated in these investments. Customer X was a widow who did not work and needed to support herself and her two sons. She sought a conservative to moderate investment portfolio and appeared to be a relatively unsophisticated investor. For Respondent to sell Customer X the types of investments he did and for those investment to compromise such a large portion of Customer X's portfolio was inappropriate and inconsistent with Customer X's goals, needs and priorities. Further, the concentration of those investments in the real estate market was not prudent. Therefore, Respondent violated Practice Standard 500-2.

Thirteenth 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 or misleading statements to CFP Board when he answered "No" to question No. 6 on his 2012 and 2014 CFP Board Renewal Applications. Question No. 6 asks "Have you ever been a defendant or respondent in a civil action including, but not limited to, a lawsuit, arbitration or mediation?" Respondent was a named defendant in the 2010 Customer X FINRA Arbitration, and he should have truthfully answered "Yes" to question No. 6. Respondent stated that he did not disclose this because his attorney told him he did not need to disclose the matter because it was resolved. This explanation is at odds with the facts. The settlement agreement between Respondent and Customer X specifically states that Customer X may provide information to CFP Board in connection with any inquiry CFP Board may make about this matter. It was not until 2016, approximately five years after the settlement, that Respondent finally disclosed the Arbitration to CFP Board. Therefore, there are grounds to discipline Respondent under Article 3(g).

IV. Discipline Imposed

The Commission found that Respondent's conduct violated Rules 201, 202, 607, and 703 of the *Code of Ethics*, and Practice Standards 400-1, 400-3, and 500-2, providing grounds for discipline under Articles 3(a), 3(b), and 3(g) of the *Disciplinary Rules*.

After careful consideration of the evidence in Respondent's matter, the Commission has decided to issue Respondent a suspension for one year pursuant to Article 4.3 of the *Disciplinary Rules*. The suspension is effective from June 2018 until June 2019 if Respondent does not appeal this order.

In arriving at its decision, the Commission determined that the applicable Sanction Guidelines recommended:

1. A private Censure for Conduct 14(a): Failure to Disclose to CFP Board; and
2. A suspension for one year for Conduct 31: Suitability Violation.

Here the Commission provided more weight to Conduct 31 as the conduct underlying that sanction guideline was the primary violation involving professional services provided to the client. Thus, the Commission began with a baseline sanction of one year in its analysis of the appropriate sanction. The Commission then consulted Anonymous Case Histories ("ACHs") to determine if any ACHs contained precedent that warranted a deviation from the Sanction Guidelines. The commission consulted ACHs 27713 and 22866.

In ACH 27713, a CFP® professional recommended and sold clients alternative investments that resulted in an unsuitable concentration of the clients' assets in alternative investments and that were unsuitable due to the clients' ages, risk tolerances, and investment objectives. Most of the clients involved were of advanced age and were relying on their investments for income. Despite finding multiple mitigating and aggravating factors, the Commission imposed a one- year suspension, which was consistent with Conduct 30. While the Commission acknowledged ACH 27713 involved multiple clients, which was not the case in Respondent's matter, the Commission did not find anything in the ACH that gave substantial weight to the fact that it involved multiple clients. In fact, the Commission in that case did not aggravate the sanction due to the involvement of multiple clients.

In ACH 22866, a CFP® professional allowed unsophisticated clients who had recently won the lottery to become over- concentrated in illiquid investments over several years. In addition, the CFP® professional did not properly counsel his clients regarding their spending and the negative effect caused by holding such illiquid assets. In that case, the Appeals Committee imposed a suspension for one-year and one day.

The Commission found both ACHs to be persuasive precedent indicating that a one-year sanction was a reasonable outcome based on Respondent's conduct. The Commission then reviewed the aggravating and mitigating factors to determine whether there were any material factors, and if so, what weight those factors may have in its decision. The Commission considered the following in aggravation:

1. Respondent failed to disclose the FINRA arbitration to CFP Board on two Ethics Declaration Forms, which allowed the matter to age significantly before CFP Board was able to investigate the arbitration;
2. Respondent continued to over-concentrate Customer X's portfolio over time despite the fact that he had multiple opportunities to diversify;
3. Respondent's firm placed him on heightened supervision due to his actions handling Customer X's investments; and
4. Respondent had a prior customer complaint and subsequent litigation involving his sale of alternative investments to a client.

The Commission did not consider any mitigating factors. Despite the existence of several aggravating factors, the Commission did not find any to be of sufficient weight to warrant a deviation from the recommended sanction for Conduct 31. Further, the Commission determined the suspension was appropriate given the severity of the conduct. Customer X was in a vulnerable position as a recent widow. Respondent failed his client by: 1) increasing her concentration in illiquid assets over several years, 2) failing to discuss options regarding her lifestyle and the choices she had after her husband was killed, 3) making unsuitable recommendations for someone who had two young children and needed a combination of stable income and growth of assets, and 4) never having a clear and concise conversation regarding her spending as it became clear she was spending more than the income produced by her portfolio. The Commission decided that a one-year suspension appropriately reflected the seriousness of Respondent's ethical breach.