

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22879

This is a summary of a decision issued following the February 2010 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. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he failed to comply with Financial Industry Regulatory Authority (“FINRA,” formerly National Association of Securities Dealers or “NASD”) rules relating to the approval and content of advertisements.

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

In September 2008, Respondent disclosed his involvement in a 2007 FINRA investigation of allegations that he participated in media segments without his firm’s approval. As a result of the investigation, Respondent entered into a Letter of Acceptance Waiver and Consent (“AWC”) in which he consented to a censure, a 10-day suspension and a \$10,000 fine.

Respondent consented to the following findings in the AWC:

1. The segments were advertisements as defined by NASD Rule 2210(a)(1). Because the segments were advertisements, they should have been submitted for approval prior to their use, pursuant to NASD Conduct Rules 2210(b)(1) and 2110.
2. The segments violated FINRA Rules 2210(d)(1)(a), 2210(d)(1)(b) and 2110 because many of the advertisements were incomplete, unfair, unbalanced, oversimplified and/or exaggerated, causing the segments to be misleading.
3. Respondent violated NASD Conduct Rules 2210(e) and 2210 because he failed to include a reference to his firm’s SIPC membership.
4. Respondent violated NASD Conduct Rules 2210(c)(2)(a) and 2110 because he failed to file a mutual fund advertisement with FINRA within 10 days of its use.

III. Commission's Analysis and Conclusions Regarding Rule Violations

A. Rule 102 – In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.

The Commission found that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly made a false or misleading statement to his clients in that he made misleading statements in several advertising segments that created the impression that his firm endorsed statements that were incomplete, oversimplified and/or exaggerated. Thus, Respondent violated Rule 102.

B. Rule 406 – A CFP Board designee who is an employee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with this Code of Ethics.

The Commission found that Respondent failed to perform professional services with dedication to the lawful objectives of his employer because he participated in media segments without obtaining his firm's approval, resulting in a fine and additional compliance training. Thus, Respondent violated Rule 406.

C. Rule 606(a) – In all professional activities a CFP Board designee shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities.

The Commission found that Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities because he participated in advertising segments which violated FINRA rules relating to the approval and content of advertisements. Thus, Respondent violated Rule 606(a).

D. Rule 606(b) – In all professional activities a CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board.

The Commission found that Respondent failed to perform services in accordance with CFP Board rules, regulations and policies because he violated *Code of Ethics* Rules 102, 406, 606(a) and 607 as discussed herein. Thus, Respondent violated Rule 606(b).

E. Rule 607 – 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.

The Commission found that Respondent engaged in conduct which reflects adversely on his integrity or fitness as a CFP Board designee, upon the marks and upon the profession because he: 1) failed to submit advertising segments for approval prior to their use; 2) participated in advertising segments that did not comply with FINRA's content standards; 3) failed to submit mutual fund advertisements to FINRA within 10 days of use; and 4) violated the above *Code of Ethics* rules. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules") provides grounds for discipline for a violation of the *Code of Ethics*. The Commission found Article 3(a) grounds for discipline because Respondent violated the above *Code of Ethics* rules. The Commission also found Article 3(d) grounds for discipline because Respondent received a professional suspension.

The Commission issued a public letter of admonition to Respondent, pursuant to Article 4.2 of the *Disciplinary Rules*.

In mitigation, the Commission considered the following factors:

- 1) Respondent has been in the business for 25 years with no prior disciplinary history;
- 2) Respondent self-disclosed his involvement in the advertising segments;
- 3) No clients were harmed; and
- 4) Respondent is not a threat to the public.

The Commission cited as an aggravating factor that Respondent had seen similar advertisements and should have known the segments should have been pre-approved.