

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 11390

This is a summary of a Settlement Agreement entered into at 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. Issues Presented

Whether a CFP[®] professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when she: 1) filed for Chapter 7 Bankruptcy; 2) was convicted of Operating a Motor Vehicle While Ability Impaired by Alcohol; and 3) was the subject of a series of arbitrations and customer complaints from 2001 through 2007.

II. Findings of Fact

In July 2002, Respondent disclosed a 2001 civil lawsuit and customer complaint filed by Client A and a 2002 customer complaint filed by Client B to CFP Board. In the 2001 lawsuit, Client A alleged unsuitable investments and misrepresentation. The lawsuit resulted in a \$576,000 settlement, to which Respondent did not contribute. The 2002 complaint alleged misrepresentation and resulted in a \$15,370 settlement, to which Respondent did not contribute.

During a routine background check, CFP Board discovered a 2003 National Association of Securities Dealers (“NASD”, now known as Financial Industry Regulatory Authority, Inc. or “FINRA”) arbitration filed by Client C who alleged unsuitable investments and deception. In March 2004, Respondent notified CFP Board that Client C’s lawsuit resulted in a \$250,000 settlement with Respondent, who contributed \$62,500 toward the settlement.

In June 2004, Respondent disclosed a pending 2003 NASD Arbitration filed by Client D. In an internal memorandum, Respondent’s counsel recommended a settlement between \$25,000 and \$75,000 because Respondent invested inconsistently with the goals set forth by the claimants. In January 2005, Respondent notified CFP Board that the Client D NASD Arbitration resulted in a \$57,500 settlement with Respondent contributing \$28,750 toward the settlement.

In May 2006, Respondent disclosed a pending employment lawsuit alleging tortious interference with existing contractual and prospective business relations, breach of fiduciary duty and misappropriation of trade secrets. The case was settled with no monetary award to either party.

In October 2006, a grievance was filed against Respondent alleging that Respondent forged the grievant’s signature on checks and that Respondent was charged with Operating a Motor Vehicle Under the Influence of Drugs or Alcohol, and Unlawful Possession of Marijuana.

In September 2007, Respondent disclosed a FINRA inquiry into a complaint filed against Respondent by Client E alleging that Respondent forged the client's signature on documents. Respondent subsequently notified CFP Board that FINRA closed their file on Client G's customer complaint without taking action against Respondent.

Finally, Respondent disclosed a Chapter 7 Bankruptcy she filed in April 2009. The bankruptcy was discharged in July 2009.

During the course of the investigation, in addition to the issues mentioned, CFP Board discovered the following denied customer complaints: 2001 Client F Customer Complaint, 2003 Client G Customer Complaint, 2004 Client H Customer Complaint, 2005 Client I Customer Complaint, 2005 Client J Customer Complaint, 2005 Client K Customer Complaint, 2005 Client L Customer Complaint, 2006 Client M Customer Complaint, and 2007 Client N Customer Complaint. Many of these complaints alleged unsuitable investments and misrepresentation.

III. 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.

Respondent displayed a pattern of deceit and misrepresentation regarding financial products as evidenced by the series of arbitrations and customer complaints. By deceiving and misrepresenting financial products to clients, Respondent, in the course of professional activities, engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly made 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. Thus, Respondent violated Rule 102.

B. Rule 201 – A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.

Respondent displayed a pattern of deceit and misrepresentation regarding financial products and recommended unsuitable financial products as evidenced by the series of arbitrations and customer complaints. By not truthfully representing financial products and recommending unsuitable financial products, Respondent did not exercise reasonable and prudent professional judgment in providing professional services. Thus, Respondent violated Rule 201.

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

Respondent failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when she violated *Code of Ethics* Rules 102, 201, and 607. Thus, Respondent violated Rule 606(b).

D. Rule 607 – A CFP Board designee shall not engage in conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.

Respondent engaged in conduct that reflects adversely on her integrity and fitness as a CFP Board designee, upon the marks, and upon the profession because she: 1) filed for Chapter 7 Bankruptcy in 2009; 2) was convicted of Operating a Motor Vehicle While Ability Impaired by Alcohol; and 3) has engaged in a pattern of deceit and misrepresentation regarding financial products and recommended unsuitable financial products as evidenced by the series of arbitrations and customer complaints. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(c) and 3(e) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules"). Article 3(a) provides grounds for discipline for any violation of CFP Board's *Code of Ethics*. The Commission founds grounds for discipline under Article 3(a) because Respondent violated the *Code of Ethics* rules discussed above. Article 3(c) provides grounds for discipline for violation of criminal laws. The Commission found Article 3(c) grounds for discipline because Respondent violated state criminal laws. Article 3(e) provides grounds for discipline for any act or omission that violates the *Disciplinary Rules*. The Commission found grounds for discipline under Article 3(e) because Respondent failed to notify CFP Board of her criminal conviction within 10 calendar days of the conviction, as required by Article 12.2 of CFP Board's *Disciplinary Rules*.

Respondent and CFP Board entered into a Settlement Agreement in which Respondent consented to the above Findings of Fact and Rule Violations. Based on the terms of the Settlement Agreement, the Commission issued a suspension of Respondent's right to use the CFP® marks for five years, pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission cited as a mitigating factor that the 10 complaints filed against Respondent had been denied. The Commission cited as aggravating factors: 1) a consistent pattern of complaints from 1997 to 2007; 2) documents and admissions by Respondent that demonstrated a serious lack of communication to clients and lack of responsiveness to client concerns, especially about Respondent's product selections; 3) Respondent's consistent pattern of unsuitability, misrepresentation, and failure to supervise; 4) Respondent's prior disciplinary history with CFP Board; and 5) that Respondent did not acknowledge responsibility for her actions.