

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 12594

This is a summary of a decision issued following the June 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 and after January 1, 2009. The Rules in effect for conduct occurring prior to January 1, 2009 were Rules 101 through 705 of CFP Board’s *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”). 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. Issues Presented

Whether a CFP[®] professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) was the subject of at least five customer arbitrations alleging unsuitability, unauthorized trading, misrepresentation, churning, fraud and violations of both state and federal securities laws; 2) was alleged to have falsified customer account documents; 3) was permitted to resign from his firm due to unacceptable business practices; and 4) filed for Chapter 7 Bankruptcy.

II. Findings of Fact Relevant

In 2003, CFP Board began an investigation into at least five customer arbitrations. Each customer alleged that Respondent engaged in unauthorized trading, misrepresentation of risk tolerances and investment objectives, and churning. Specifically, the Commission found that:

1. An National Association of Securities Dealers (“NASD,” now known as the Financial Industry Regulatory Authority, Inc. or “FINRA”) panel awarded Client A approximately \$69,000 in damages. Respondent was held jointly and severally liable and contributed approximately \$23,000 toward payment of the award;
2. Respondent executed a trade on margin five days prior to the execution of a margin agreement by Client B; and
3. An NASD panel determined that Respondent engaged in the fraud and falsification of Client C’s documents, justifying a \$2,250,000 punitive damage award.

CFP Board also discovered that:

1. Respondent’s employer permitted him to resign due to “unacceptable business practices;” and
2. Respondent failed to disclose to clients that he does not provide financial planning services despite being a CFP[®] professional.

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.

The Commission determined Respondent engaged in conduct involving fraud based on the Client C arbitration, in which the hearing panel awarded \$2,250,000 in punitive damages based, in part, on what it referred to as “fraud and falsification” of account documents by Respondent. Therefore, Respondent engaged in conduct involving dishonesty, fraud, deceit, misrepresentation and knowingly making false statements to clients, in violation of Rule 102.

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

The Commission determined Respondent failed to exercise reasonable and prudent professional judgment in his provision of professional services based on the Client C arbitration, in which the hearing panel awarded \$2,250,000 in punitive damages based, in part, on what it referred to as “fraud and falsification” of account documents by Respondent. Therefore, Respondent violated Rule 201.

C. 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 determined Respondent failed to perform professional services with dedication to the lawful objectives of his employers and in accordance with the *Code of Ethics* when he was permitted to resign due to “unacceptable business practices.” Thus, Respondent violated *Code of Ethics* Rule 406.

D. 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 determined Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he was found to have engaged in the “fraud and falsification” of account-opening documents, in violation of NASD Conduct Rules 2110 and 2310. Thus, Respondent violated Rule 606(a).

E. 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 determined Respondent violated *Code of Ethics* Rules 102, 201, 406, 606(a) and 607. Therefore, he failed to comply with the applicable rules, regulations and other established policies of CFP Board in violation of Rule 606(b).

F. 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 determined: 1) Respondent was the subject of at least five customer arbitrations alleging unsuitability, unauthorized trading, misrepresentation, churning, fraud and violations of both

state and federal securities laws; 2) In the Client C arbitration, the hearing panel awarded \$2,250,000 in punitive damages based on what it referred to as “fraud and falsification” of account documents by Respondent; and 3) Respondent’s employer permitted him to resign due to unacceptable business practices. Thus, Respondent violated Rule 607.

G. Rule 2.1 - 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.

The Commission determined that Respondent failed to disclose to clients that he does not provide financial planning services despite his designation as a CFP® professional. Thus, Respondent violated Rule 2.1.

IV. Discipline Imposed

Article 3(a) of CFP Board’s *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”) provides grounds for discipline for any act or omission that violates the *Code of Ethics* or *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 102, 201, 406, 606(a), 606(b) and 607 of the *Code of Ethics* and Rule 2.1 of the *Rules of Conduct*. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a suspension of one year and one day.

The Commission considered as a mitigating factor that Respondent disclosed his involvement in the customer arbitrations.

The Commission considered the following aggravating factors:

1. Respondent did not acknowledge responsibility for his actions.
2. Respondent’s actions did not change after he was required to pay a portion of the Client A arbitration award.