

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 12637

This is a summary of a decision issued following the February 2011 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) engaged in a pattern of recommending that clients invest their entire retirement savings in unsuitable variable annuities and sub-account allocations, as evidenced by four National Association of Securities Dealers (“NASD,” now known as the Financial Industry Regulatory Authority, Inc. or “FINRA”) arbitrations; and 2) when she used “cfp” after her name in her Web site address.

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

2001 Client 1 NASD Arbitration

In August 2001, Client 1 filed a Statement of Claim against Respondent and her firm in NASD Arbitration. In November 1999, Client 1 retired with \$1,335,500 in investable assets. In January 2000, Respondent recommended that Client 1 invest all of his retirement assets in a variable annuity. Client 1 alleged that Respondent’s recommendation and subsequent sub-account allocations were unsuitable and requested damages for losses of approximately \$684,500. In January 2002, Respondent filed an Answer claiming that her recommendations were suitable and that Client 1 authorized all purchases in his accounts. In March 2004, the Arbitration Panel of NASD Dispute Resolution awarded Client 1 \$275,000 in compensatory damages and held Respondent and her firm jointly and severally liable.

2003 Client 2 NASD Arbitration

In December 2003, Client 2 filed a Statement of Claim against Respondent and her broker-dealer in NASD Arbitration. In March 2000, Client 2 opened an account with Respondent as his representative. Respondent recommended that Client 2 invest all \$297,000 of his retirement savings in a variable annuity. Client 2 alleged that Respondent’s recommendation and subsequent sub-account allocations were unsuitable and requested damages for losses of \$190,000. In January 2004, Respondent sent a letter to Client 2’s attorney in response to the Statement of Claim. Respondent claimed that her recommendations were suitable for Client 2’s

investment objective of growth. In December 2005, Respondent and her broker-dealer entered into a Settlement Agreement and Release with the Executrix of Client 2's estate. In the Settlement Agreement, Respondent and her broker-dealer denied all allegations in the Statement of Claim but agreed to pay Client 2's estate approximately \$13,800. According to Respondent's Central Registration Depository ("CRD") record, Respondent did not individually contribute to the settlement payment.

2004 Client 3 NASD Arbitration

In June 2004, Client 3 filed a Statement of Claim against Respondent and her broker-dealer in NASD Arbitration. In February 2000, Respondent recommended and Client 3 purchased a variable annuity with \$100,000 of the \$106,000 retirement benefit distribution he received from his career as a maintenance mechanic. Client 3 alleged that Respondent's recommendation and subsequent sub-account allocations were unsuitable and requested damages for losses of \$70,000. In October 2004, Respondent filed an Answer to the Statement of Claim. Respondent claimed that her recommendations were suitable for Client 3's investment objectives of an ability to make withdrawals, achieve growth, and secure principal through the use of a death benefit. In October 2005, Respondent and her broker-dealer entered into a Settlement Agreement and Release with Client 3. In the Settlement Agreement, Respondent and her broker-dealer denied all allegations in the Statement of Claim, but agreed to pay Client 3 \$44,000. According to Respondent's CRD record, Respondent did individually contribute to the settlement payment.

2004 Client 4 NASD Arbitration

In August 2004, Client 4 filed a Statement of Claim against Respondent and her broker-dealer in NASD Arbitration. Respondent met with Client 4 in November 1999 to discuss his financial situation and objectives. In Respondent's notes from the November 1999 meeting, she wrote that Client 4 "does not like annuities." In December 1999, Respondent recommended and Client 4 purchased two variable annuities with 100% of his retirement assets of approximately \$1.4 million. Client 4 alleged that Respondent's recommendation and subsequent sub-account allocations were unsuitable and requested damages for losses of approximately \$618,000. In October 2004, Respondent filed an Answer to the Statement of Claim. Respondent claimed that her recommendations were suitable for Client 4's investment objectives of an ability to make withdrawals, achieve growth, and secure principal through the use of a death benefit. In January 2006, Respondent and her broker-dealer entered into a Settlement Agreement and Release with Client 4. In the Settlement Agreement, Respondent and her broker-dealer denied all allegations in the Statement of Claim but agreed to pay Client 4 \$155,000. According to Respondent's CRD record, Respondent individually contributed \$5,000 to the settlement payment.

Marks Misuse

Respondent has a Web site with the address: [http://www.\[Respondent's name\]cfp.com/](http://www.[Respondent's name]cfp.com/), which is used to advertise her book and her firm.

III. Commission's Analysis and Conclusions Regarding Rule Violations

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

The Commission determined that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when she engaged in a pattern of recommending that clients invest their entire retirement savings in unsuitable variable annuities and sub-account allocations as evidenced by the 2001 Client 1 NASD Arbitration, 2003 Client 2 NASD Arbitration, 2004 Client 3 NASD Arbitration, and 2004 Client 4 NASD Arbitration. Thus, Respondent violated Rule 201.

- B. *Rule 601 – A CFP Board designee shall use the marks in compliance with the rules and regulations of CFP Board.*

The Commission determined that Respondent failed to use the CFP[®] marks in compliance with the rules and regulations of CFP Board, as established and amended from time to time, when she listed “cfp” after her name on her Web site [http://www.\[Respondent's name\]cfp.com/](http://www.[Respondent's name]cfp.com/). This use violates Section 2.8 of the *Guide to Use of the CFP[®] Certification Marks*. Thus, Respondent violated Rule 601.

- 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 determined that Respondent failed to perform professional services in accordance with the applicable laws, rules and regulations of governmental agencies and other applicable authorities when she engaged in a pattern of recommending that clients invest their entire retirement savings in unsuitable variable annuities and sub-account allocations as evidenced by the 2001 Client 1 NASD Arbitration, 2003 Client 2 NASD Arbitration, 2004 Client 3 NASD Arbitration, and 2004 Client 4 NASD Arbitration. Thus, Respondent violated Rule 606(a).

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

The Commission determined that Respondent violated Rules 201, 601, 606(a) and 607, and thus failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when she: 1) engaged in a pattern of recommending that clients invest their entire retirement savings in unsuitable variable annuities and sub-account allocations as evidenced by the 2001 Client 1 NASD Arbitration, 2003 Client 2 NASD Arbitration, 2004 Client 3 NASD Arbitration, and 2004 Client 4 NASD Arbitration; and 2) listed “cfp” after her name on her Web site [http://www.\[Respondent's name\]cfp.com/](http://www.[Respondent's name]cfp.com/) in violation of

Section 2.8 of the *Guide to Use of the CFP® Certification Marks*. Thus, Respondent violated Rule 606(b).

E. 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 when she: 1) engaged in a pattern of recommending that clients invest their entire retirement savings in unsuitable variable annuities and sub-account allocations as evidenced by the 2001 Client 1 NASD Arbitration, 2003 Client 2 NASD Arbitration, 2004 Client 3 NASD Arbitration, and 2004 Client 4 NASD Arbitration; and 2) listed “cfp” after her name on her Web site [http://www.\[Respondent's name\]cfp.com/](http://www.[Respondent's name]cfp.com/), in violation of Section 2.8 of the *Guide to Use of the CFP® Certification Marks*. 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 any act or omission that violates the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated *Code of Ethics* Rules 201, 601, 606(a), 606(b) and 607. Accordingly, the Commission issued a Public Letter of Admonition to Respondent pursuant to Article 4.2 of the *Disciplinary Rules*.

The Commission considered as mitigating factors that:

1. Respondent stated that she changed her practice, wrote a book, and reduced her use of variable annuities to 30% of the time;
2. Respondent stated that she learned from her mistakes;
3. Respondent maintained substantial documentation of client meetings; and
4. Respondent was not the subject of other complaints outside of the 1999-2001 period.

The Commission considered as aggravating factors that:

1. Respondent did not have a process for the discovery of investment objectives, risk tolerance, insurance needs, or determining portfolio income needs;
2. There were several NASD arbitrations and an apparent pattern of conduct;
3. All of these clients were of advanced age and no fixed income funds were used;
4. All of these clients had all of their money invested in the variable annuity products; and
5. Respondent individually paid part of the settlements.