

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 13449

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 he: 1) recommended clients over-concentrate their assets in annuities; 2) failed to adequately supervise while serving as both a broker-dealer principal and compliance officer of a broker-dealer in twenty-two states with fifty brokers and five registered investment advisors; 3) violated the state securities act (“Act”) resulting in a Settlement Order (“Order”); and 4) was named in a National Association of Securities Dealers (“NASD,” now known as the Financial Industry Regulatory Authority, Inc. or “FINRA”) Arbitration.

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

In October 2003, a State Corporation Commission issued an Order, which fined Respondent \$2,000 and ordered Respondent to refrain from any conduct that constitutes a violation of the Act. In September 2003, Respondent consented to the form, substance and entry of the Order without admitting or denying the allegations made in the Order.

The Order alleged that:

- A. Respondent violated the Act when he sold promissory notes through a broker-dealer of which he was president and a registered agent, to a state resident in September 1997, at which time Respondent was not registered as an agent with Respondent’s broker-dealer;
- B. Respondent violated the Act in his sale of promissory notes for which Respondent maintained fictitious account information in order to execute transactions;
- C. Respondent violated the Act when he divided or split agent commissions, profits or other compensation from the purchase or sale of securities in question in the state with a person not registered as an agent for the same broker-dealer; and
- D. Respondent violated the Act when he indirectly engaged in a course of business that operated as deceit upon the purchaser by the offer and sale of the promissory notes.

Pursuant to the Order, Respondent consented to the State Corporation Commission’s jurisdiction and authority to enter the Order without admitting or denying the allegations of the Order. Respondent agreed to refrain from violating the Act, to pay \$2,000 in penalties and costs, and to

pay an additional \$7,000 in penalties and costs should he decide to seek registration as a broker-dealer in the state in the future.

In May 2003, Client A, individually and as trustee of Client B Pension Trust (“Trust”), filed a Complaint in NASD Arbitration against Respondent. The Complaint alleged unsuitable recommendations, breach of fiduciary duty, negligence, and fraud. In March 2005, a panel awarded Client A and the Trust \$200,000. Respondent’s Central Registration Depository Form U4 disclosure indicated that Respondent did not make any individual contribution to the award.

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 found that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when his roles of broker-dealer principal and compliance officer of a broker-dealer in twenty-two states with fifty brokers and five registered investment advisors prevented him from providing adequate supervision in both situations resulting in the State Settlement Order and NASD arbitration. Thus, Respondent violated Rule 201.

B. *Rule 606(b) – 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 violated *Code of Ethics* Rule 201 and thus failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when his roles of broker-dealer principal and compliance officer of a broker-dealer in twenty-two states with fifty brokers and five registered investment advisors prevented him from providing adequate supervision in both situations resulting in the State Settlement Order and NASD arbitration. Thus, Respondent violated Rule 606(b).

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 Rules 201 and 606(b). Accordingly, the Commission issued a private censure to Respondent pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered as mitigating factors:

1. The State Settlement Order contained an administrative penalty;
2. The State Stipulation and Consent Order was dismissed by CFP Board;
3. Respondent was forthcoming and accepted responsibility;
4. Respondent is no longer in a supervisory role; and
5. The underlying conduct of these issues occurred many years ago.

The Commission did not consider any aggravating factors.