

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 13677

This is a summary of a decision issued following the June 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) sold the major asset of his investment advisory firm for his own benefit and to the detriment of his minority shareholders, who were also investment advisory clients; 2) failed to disclose on his state insurance license renewal application that he had been named in National Association of Securities Dealers (“NASD,” now known as the Financial Industry Regulatory Authority or “FINRA”) arbitrations and customer complaints; and 3) engaged in an adulterous relationship with his client while both were married.

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

FINRA Arbitrations

Respondent is the Chief Executive Officer of a Securities and Exchange Commission-registered Registered Investment Advisor. Respondent is the sole director and majority shareholder of the investment advisory firm. In 1999, the investment advisory firm held a private offering to raise money for working capital, marketing, expansion of present facilities, and operating expenses. Four investment advisory clients of the firm purchased \$2,550,000 worth of shares of the firm, which represented 12.5% of the company.

In December 2009, Respondent’s investment advisory firm sold all of its client accounts to Respondent’s son, a registered representative at a national broker-dealer, for \$725,000, a monthly payment, and a percentage of the son’s future performance payments. According to the Asset Purchase Agreement, the four clients were entitled to one-third of the performance payments.

In September 2010, the four clients filed a Statement of Claim in FINRA arbitration against the investment advisory firm, Respondent, and Respondent’s son. The Statement of Claim alleged that the firm sold its primary asset of value, its client accounts, to Respondent’s son to the detriment of the Claimants, who were minority shareholders.

On December 18, 2010, Respondent filed his Answer to the Statement of Claim. The Answer states that the private placement offering of the firm was made only to accredited investors who were informed by the private placement memorandum, subscription agreement, and other offering documents that the offering was a “highly speculative investment.” As of CFP Board’s hearing, the FINRA arbitration was pending.

In September 2009, a client filed a Statement of Claim against Respondent and his broker-dealer in FINRA arbitration. The Statement of Claim alleged that Respondent made unsuitable recommendations in 2007 by advising the client to exchange her existing fixed annuities into variable annuities. In January 2010, Respondent filed an Answer to the Statement of Claim that stated the annuities comprised a small portion of the client’s net worth and met the client’s investment objectives. Respondent stated that the impetus for the arbitration was the souring of an adulterous relationship between Respondent and the client. Both Respondent and the client were married during the relationship. The parties entered into a General Release wherein Respondent's broker-dealer settled the matter for \$200,000.

Regulatory Action

In June 2005, a state insurance department initiated an inquiry against Respondent for his failure to disclose on his application for renewal that he had been named in NASD arbitrations and customer complaints. In January 2007, Respondent entered into a Stipulation in which he admitted to providing materially incorrect information on his renewal applications for his agent’s license in March 2001, June 2003, and March 2005, in violation of state insurance law. The Stipulation imposed a \$1,500 fine.

II. 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 making a false or misleading statement to the client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

The Commission determined that Respondent knowingly made a false statement to the state insurance department when he failed to disclose on his application for renewal that he had been named in NASD arbitrations and customer complaints. Thus, Respondent violated *Code of Ethics* Rule 102.

- B. *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 he: 1) sold the major asset of his investment advisory firm for his own benefit and to the detriment of his minority shareholders, who were also investment advisory clients; and 2) failed to disclose on his state insurance license

renewal application that he had been named in NASD arbitrations and customer complaints. Thus, Respondent violated *Code of Ethics* 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 that Respondent did not perform professional services with dedication to the lawful objectives of his employer and in accordance with CFP Board's *Code of Ethics* when he failed to disclose on his state insurance license renewal application that he had been named in NASD arbitrations and customer complaints. Thus, Respondent violated Rule 406.

D. Rule 606(a) – In all professional activities, a CFP Board designee shall perform professional services in accordance with the 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 he failed to disclose on his state insurance license renewal application that he had been named in NASD arbitrations and customer complaints. Thus, Respondent violated *Code of Ethics* Rule 606(a).

E. 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.

The Commission determined that Respondent violated *Code of Ethics* Rules 102, 201, 406, 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 he: 1) sold the major asset of his investment advisory firm for his own benefit and to the detriment of his minority shareholders, who were also investment advisory clients; 2) failed to disclose on his state insurance license renewal application that he had been named in NASD arbitrations and customer complaints; and 3) engaged in an adulterous relationship with his client while both were married. Thus, Respondent violated *Code of Ethics* Rule 606(b).

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

The Commission determined that Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he: 1) sold the major asset of his investment advisory firm for his own benefit and to the detriment of his minority shareholders, who were also investment advisory clients; 2) failed to disclose on his state insurance license renewal application that he had been named in NASD arbitrations and

customer complaints; and 3) engaged in an adulterous relationship with his client while both were married. Thus, Respondent violated *Code of Ethics* Rule 607.

III. 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 102, 201, 406, 606(a), 606(b), and 607 of the *Code of Ethics*. Pursuant to Article 4.2 of the *Disciplinary Rules*, the Commission issued the Respondent a Public Letter of Admonition.

The Commission did not consider any mitigating or aggravating factors.