

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 13679

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. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he failed to consider all of his clients’ financial concerns and, thus, failed to recognize the impropriety of clients of the financial advisory firm purchasing an interest in his financial advisory firm.

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

Respondent was the president of an investment advisory firm and had primary responsibility for the financial and investment services offered by the firm. In 1999, the firm held a private offering to raise money for working capital, marketing, expansion of present facilities, and operating expenses. Four clients purchased \$2,550,000 worth of shares of the firm, which represented 12.5% of the company.

In December 2009, Respondent registered through the Financial Industry Regulatory Authority, Inc. (“FINRA”) as a registered representative with a large, national broker-dealer. In December 2009, Respondent’s previous investment advisory firm sold all of its client accounts to Respondent for \$725,000, a monthly payment, and a percentage of Respondent’s future performance payments. According to the Asset Purchase Agreement, the four clients were entitled to one-third of the performance payment.

In September 2010, the four clients filed a Statement of Claim in FINRA arbitration against the investment advisory firm, the firm’s sole owner, and Respondent. The Statement of Claim alleged that the Claimants were clients of Respondent and the investment advisory firm when the owner solicited the Claimants to buy shares of the firm. The Statement of Claim further alleged that the firm sold its primary asset of value, its client accounts, to Respondent to the detriment of the Claimants, who were minority shareholders. As of CFP Board’s hearing the FINRA arbitration was pending.

III. Commission's Analysis and Conclusions Regarding Rule Violations

- A. *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* Rule 607 and failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when he failed to consider all of his clients' financial concerns and, thus, failed to recognize the impropriety of clients of the firm purchasing an interest in the investment advisory firm. Thus, Respondent violated *Code of Ethics* Rule 606(b).

- B. *Rule 607 – A CFP Board designee shall not engage in 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 failed to consider all of his clients' financial concerns and, thus, failed to recognize the impropriety of clients of the firm purchasing an interest in the investment advisory firm. Thus, Respondent violated *Code of Ethics* 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 Rules 606(b) and 607 of the *Code of Ethics*. Pursuant to Article 4.1 of the *Disciplinary Rules*, the Commission issued a Private Censure to Respondent.

The Commission considered as mitigating factors: 1) Respondent relied heavily on the lawyers who prepared the disclosure information to prospective purchasers of the investment advisory firm to provide the required disclosures; and 2) Respondent attempted to protect investors' interests in the agreement he negotiated to purchase the client accounts from the investment advisory firm.

The Commission considered as an aggravating factor that Respondent persistently fails to understand the scope of his obligation to his clients under the comprehensive financial planning process.