

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 14399

This is a summary of a decision issued following the July 2008 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® certificant (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he conducted outside business activities without disclosing them to his employer and without obtaining his employer’s approval.

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

In January 2005, Respondent’s employer (“Firm”) initiated an internal review of Respondent. The Firm found that Respondent violated its policies because he failed to obtain the Firm’s approval for, or otherwise disclose to the Firm, certain outside business activities in which he was involved.

In June 2006, Respondent entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with the National Association of Securities Dealers (“NASD”). According to the AWC, Respondent participated in private securities transactions without providing his member firm prior written notice of the transactions and his role in the transactions, which is a violation of NASD Conduct Rules 2110 and 3040. Respondent was fined and suspended from association with any NASD member in any capacity for nine months.

III. Commission’s Analysis and Conclusions Regarding Rule Violations

- A. *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 found that Respondent failed to perform professional services with dedication to the lawful objectives of his employer because he failed to obtain the Firm’s approval for, or disclose to it, his outside business activities in violation of Firm policies. Thus, Respondent violated Rule 406.

- B. *Rule 407(a) – A CFP Board designee shall advise his/her employer of outside affiliations which reasonably may compromise service to an employer.*

The Commission found that Respondent failed to advise his employer of outside affiliations which reasonably may compromise service to it because he failed to disclose his outside business activities to the Firm in violation of the Firm's policy. Thus, Respondent violated Rule 407(a).

- 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 found that Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities because his conduct violated NASD Conduct Rules 2110 and 3040. Thus, Respondent violated Rule 606(a).

- D. *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 found that Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board because he violated the *Code of Ethics* rules discussed herein. Thus, Respondent violated Rule 606(b).

- E. *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 that Respondent displayed a repeated failure to clearly and concisely document relationships, analysis and actions. The Commission found that Respondent engaged in conduct which reflects adversely on his integrity or fitness as a CFP Board designee, upon the marks, and upon the profession because Respondent violated the *Code of Ethics* rules described herein and failed to clearly and concisely document relationships, analysis and actions. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(e) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*"). Article 3(a) provides grounds for discipline for a violation of the *Code of Ethics*. The Commission found Article 3(a) grounds for discipline because Respondent violated the above *Code of Ethics* rules. Article 3(e) provides grounds for discipline for any act or omission which violates the *Disciplinary Rules*. The Commission found Article 3(e) grounds for discipline because he failed to notify CFP Board within 10 days of his notification of the suspension as required by Article 12.2 of the *Disciplinary Rules*.

The Commission issued Respondent a one-year suspension in accordance with Article 4.3 of the *Disciplinary Rules*.

The Commission considered as a mitigating factor that Respondent was cooperative, prepared and forthcoming with CFP Board staff.

The Commission considered the following aggravating factors:

1. Respondent's record is replete with instances of conflicts of interest and failure to exercise objectivity;
2. Respondent was subject to prior disciplinary action for the same conduct, which resulted in a letter of caution; and
3. Respondent seems uncertain of his responsibilities to clients or of the proper process to disclose conflicts of interest.