CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 14547

This is a summary of a decision issued following the February 2009 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® certificant ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) created a fraudulent tax scheme that he sold to clients; 2) assisted clients in filing false tax returns; 3) was convicted of tax fraud conspiracy felonies with regard to tax returns he prepared for clients; and 4) was convicted of tax fraud felonies regarding his individual tax returns.

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

In April 2004, following an Internal Revenue Service ("IRS") investigation into a scheme to market and sell sham foreign and domestic trusts, Respondent and seven other defendants were indicted on federal tax fraud charges. Documents from United States District Court described Respondent as a promoter and manager of a company selling trust services ("Company").

According to a superseding indictment filed in United States District Court, Respondent was alleged to have committed the acts listed below while employed by the Company.

1. Respondent marketed tax shelters to prospective clients via offshore trusts.
2. Respondent assisted clients in hiding income in foreign and domestic trusts that clients would manage and control after the resignation of a nominal trustee appointed by the Company.
3. Respondent advised clients to transfer funds by wire from bank accounts in the United States to offshore accounts in countries with tax laws favorable to Respondent's activities, then transfer the funds again to another offshore bank in Antigua in the name of a foreign trust or an International Business Company ("IBC") secretly controlled by the clients. Respondent would then provide clients with credit cards linked to the IBC accounts.
4. Respondent counseled clients to repatriate their untaxed income through purported "loans" or "gifts" from their IBCs.
5. Respondent assisted clients in claiming false deductions on trusts' federal tax returns, and in claiming false charitable donations.
6. Respondent advised clients on how to prepare personal, business and trust tax returns that concealed income from the IRS.
7. Respondent assisted clients in obstructing IRS audits. Respondent counseled clients to withhold information from IRS agents, to respond to IRS inquiries with obstructive letters and questionnaires, and to resist IRS summonses by filing meritless motions.

According to the superseding indictment, Respondent was also 100% owner of a Form 1120S corporation. Respondent failed to report all of the corporation's income on his personal income tax return, which is a requirement for such companies.

In May 2008, Respondent was convicted of 12 counts of tax fraud conspiracy felonies, including: 1) conspiracy to defraud the United States by impeding the IRS in the collection of tax revenue; and 2) conspiracy to aid and assist the preparation and filing of false returns on behalf of Company clients. Respondent was also convicted of three counts of tax fraud conspiracy felonies regarding his individual tax returns for the years 1997 to 2000.

III. Interim Suspension Proceedings

In August 2008, CFP Board issued an Order to Show Cause to Respondent ordering Respondent to show why his right to use the CFP®, CERTIFIED FINANCIAL PLANNER™ and certification marks ("CFP® marks") should not be suspended during the pendency of CFP Board's disciplinary proceedings. Pursuant to Article 5.6 of CFP Board's Disciplinary Rule and Procedures ("Disciplinary Rules"), the Commission determined to order an Interim Suspension to Respondent because it found that Respondent posed an immediate threat to the public and that the gravity of the nature of Respondent's conduct impinged upon the stature and reputation of the CFP® marks. Respondent's right to use the CFP® marks was temporarily suspended pending a full hearing before the Commission.

IV. Commission's Analysis and Conclusions Regarding 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 make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.

The Commission found that Respondent engaged in conduct involving fraud because he was convicted of 12 counts of tax fraud conspiracy felonies and three counts of tax fraud felonies. Thus, Respondent violated Rule 102.

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

According to the Commission, a Rule 201 violation occurs when a respondent makes judgments that no reasonable professional in similar circumstances would have made. The Commission found that no reasonable professional would: 1) assist his or her clients to make false deductions on federal tax returns for trusts; and 2) assist clients in claiming false charitable donations. By doing so, the Commission found that Respondent did not act as a reasonable professional, and thus violated 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.*

Respondent, while acting as a promoter, manager and employee of the Company, was convicted of tax fraud felonies for the advice he gave to clients of the Company. The Commission found that because Respondent was convicted of tax fraud felonies for actions he performed while an employee of the Company, he did not perform professional services with dedication to the lawful objectives of the employer and in accordance with the *Code of Ethics*. Thus, Respondent violated Rule 406.

D. *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 because he was convicted of 15 counts of tax fraud felonies. Thus, Respondent violated Rule 606(a).

E. *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 CFP Board rules, regulations and policies because he violated federal criminal laws and thus violated Rule 606(a) of the *Code of Ethics*. Thus, Respondent violated 606(b).

F. *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 found that Respondent engaged in conduct which reflects adversely on his integrity and fitness as a CFP® certificant because he fraudulently created a tax scheme to: 1) claim false deductions on trusts' federal tax returns; and 2) claim false charitable donations. Thus, Respondent violated Rule 607.

V. <u>Discipline Imposed</u>

The Commission found grounds for discipline under Articles 3(a) and 3(c) of the *Disciplinary Rules*. Article 3(a) provides grounds for discipline for violation of provisions of the *Code of Ethics*. Article 3(c) provides for discipline for any act which violates the criminal laws of the United States. The Commission found Article 3(a) and 3(c) grounds for discipline because Respondent violated the above *Code of Ethics* rules and federal laws.

The Commission issued an Order to Revoke Permanently the Respondent's right to use the CFP®, CERTIFIED FINANCIAL PLANNER™ and CFP certification marks. No mitigating or aggravating factors were considered.