CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 15094

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. Issues Presented

Whether a CFP® certificant ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) recommended variable annuities to elderly clients; and 2) omitted the registered trademark symbol when referring to CFP® on his letterhead, certification salutations and documents.

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

In May 2006, Respondent submitted a CFP® Certification Renewal Application in which he disclosed his involvement in: 1) a 2002 Financial Industry Regulatory Authority ("FINRA", f/k/a National Association of Securities Dealers or NASD) Arbitration; 2) a 2003 FINRA Arbitration; and 3) a 2003 civil suit. While conducting a routine background check, CFP Board discovered a customer complaint against Respondent. The facts involved in these actions are described below. In addition to these actions, CFP Board discovered that on Respondent's letterhead, salutations and signature pages, he omitted the registered trademark symbol, ®, from the CFP® certification mark.

2002 FINRA Arbitration

Respondent met with a husband and wife, who became his clients in 1989. At the time, the husband was 54 years old and the wife was 50 years old. They had limited investment experience. Between 1989 and 2002, the Respondent recommended that: 1) the clients convert the fixed annuity he had sold to them to a split annuity; 2) the clients liquidate their individual retirement accounts ("IRAs" or individually, "IRA") and deposit the proceeds to the variable annuity contract in their split annuity; 3) the clients convert the split annuity to a variable annuity contract with a life insurance company ("Life"); and 4) the husband invest part of his 401(k) IRA rollover and company pension plan assets into a new Life variable annuity.

Respondent did not: 1) inform the clients that their entire retirement market portfolio was exposed to stock market volatility, risk and market decline; 2) contact the clients to see if they were satisfied with his recommendations; and 3) determine if the clients' objectives were being met based on their customer profile. The clients filed a customer complaint against Respondent in 2002 claiming that the purchase of the variable annuities was unsuitable for their low risk tolerance and imminent retirement. The customer complaint led to a FINRA Arbitration that was settled in 2006.

2003 FINRA Arbitration

In June 2000, Respondent met with a client, her son and her daughter-in-law. The client was 75 years old at the time, retired, a widow and had no prior investment experience. In May 2000, a mortgage broker ("Mortgage-Broker") affiliated with Respondent suggested that the client use her home equity to invest with Respondent. On Respondent's recommendation, the client used the net proceeds from her home mortgage to purchase a Life variable annuity. On Respondent's recommendation, the client delivered money from all of her savings accounts to Respondent, and he deposited the money into the Life variable annuity account. Respondent also recommended that the client cash in a certificate of deposit held in her IRA. With those funds, Respondent purchased shares of a mutual fund invested in high-risk stocks. By 2001, the client lost half of the funds invested in the mutual fund and over $100,000 in the Life variable annuity.

Respondent did not inform the client that: 1) the fundamental characteristics of a variable annuity are potential risk of loss to the principal, and surrender charges; 2) his commission would be higher if he chose the investment and mutual funds in the sub-accounts rather than if the client chose them on her own; and 3) the client would have to pay annual fees in order to maintain the death benefit. In 2002, the client filed a customer complaint alleging that the purchase of the variable annuity was unsuitable given her low risk tolerance and her age. The customer complaint led to a FINRA Arbitration that settled in 2005.

2003 Civil Suit

In 2001, a husband and wife met with the Mortgage Broker to refinance their home. These clients were in their late 70s and had no income and no source of cash other than retirement benefits, social security and rental income from a small house. In June 2001, based on the Mortgage Broker's advice, the clients borrowed $600,000 against their home instead of the $285,000 they had initially sought to borrow. In July 2001, based on Respondent's recommendation, the clients placed excess funds of $314,000 in a Life variable annuity contract. All of the funds in the variable annuity were invested in equity index investments. Respondent did not inform the clients that their funds would be invested in only equity index investments. The value of the variable annuity decreased and the income the clients received became insufficient to pay their mortgage. In July 2003, the clients filed a civil lawsuit against Respondent alleging that the purchase of the variable annuity contract was induced by the Respondent, who recommended that the clients borrow more money than they needed. The suit settled in May 2004.

2005 Customer Complaint

In September 2000, a client came to Respondent with $321,901.04 in funds, representing the majority of her net worth. The funds were invested in an IRA. Respondent allocated the entire IRA account into a tax-deferred variable annuity contract. In February 2003, Respondent recommended that the client move all the available surrender-free funds from the tax-deferred variable annuity contract into a Life variable annuity contract. By then, the client had lost approximately 30% of her account value in the tax-deferred variable annuity contract. The client did not receive a prospectus or explanation of the fees or surrender charges associated with the annuity transaction. In October 2005, the client filed a customer complaint against Respondent claiming that the variable annuity Respondent recommended and sold to her was unsuitable. The matter was settled in 2005.

III. 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 during Respondent’s hearing that he made the following misrepresentations:

1. Respondent testified that he did not have a relationship with the Mortgage Broker and was not involved in any transactions with the Mortgage Broker, which testimony was refuted by documents that had been submitted in the FINRA Arbitrations;
2. Respondent failed to disclose fundamental characteristics of variable annuities to his clients; and
3. Respondent informed a client that the variable annuity investment would be insured for the amount invested, regardless of what happened in the stock market.

As a result, the Commission found that Respondent engaged in conduct involving misrepresentation. Thus, Respondent violated 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 because: 1) he recommended only one type of investment to all of his clients; and 2) he failed to select investments that matched the investment objectives, risk tolerance and investment experience for clients who were elderly, risk averse and inexperienced investors. Thus, Respondent violated Rule 201.

C. Rule 601 – A CFP Board designee shall use the marks in compliance with the rules and regulations of CFP Board, as established and amended from time to time.

The Commission determined that Respondent’s omission of the registered trademark symbol on his letterhead, salutations and signature pages did not comply with CFP Board’s rules and regulations. Thus, Respondent violated Rule 601.

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 Rules 102, 201, 601, 607, 701 and 704, as 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 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 he sold investment products to clients that did not match their investment objectives, risk tolerance and investment experience. Thus, Respondent violated Rule 607.

F. *Rule 701 – A CFP Board designee shall provide services diligently.*

The Commission found that Respondent failed to provide services diligently because he failed to recommend and sell suitable investments to clients when he sold them products that did not match their investment objectives, risk tolerance and investment experience. Thus, Respondent violated Rule 701.

G. *Rule 704 – Consistent with the nature and scope of the engagement, a CFP Board designee shall make a reasonable investigation regarding the financial products recommended to clients. Such an investigation may be made by the CFP Board designee or by others provided the CFP Board designee acts reasonably in relying upon such investigation.*

The Commission determined that Respondent failed to provide services in a reasonably thorough manner when he recommended and sold investment products that did not match the investment objectives, risk tolerance and investment experience of clients who were elderly, risk averse and inexperience investors. The Commission found that because he failed to provide services in a reasonably thorough manner, Respondent failed to make a reasonable investigation regarding the financial products he recommended to the clients. Thus, Respondent violated Rule 704.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") 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. The Commission issued Respondent a five-year Suspension pursuant to Article 4.3 of the *Disciplinary Rules* and ordered Respondent to re-take the certification examination.

The Commission considered the following mitigating factors:

1. Respondent had no prior disciplinary history with CFP Board; and
2. Respondent disclosed the FINRA actions and the civil suit.

The Commission considered the following aggravating factors:

1. The customer complaint was not disclosed to CFP Board;
2. All of Respondent's clients were of advanced age; and
3. Respondent purchased variable annuities with virtually all of the client's assets in each case.