

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 15935

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® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* (“*Standards*”) when he borrowed money from clients and sold unregistered securities in violation of a state consent order.

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

In June 2001, Respondent signed a Consent Order (“2001 Consent Order”) issued by a state securities division (“SSD”). The Consent Order found that Respondent violated provisions of the state securities act and state code when he: 1) borrowed money from clients; and 2) offered and sold unregistered securities to clients. Respondent was ordered by the state to: 1) cease and desist from borrowing money from clients; 2) cease and desist from offering and selling unregistered securities; and 3) make restitution to clients of sales commissions. Respondent made a Settlement Agreement with CFP Board for a private censure in regards to the 2001 Consent Order.

In August 2001, Respondent accepted a donation from a client to a charitable organization (“Charity”) that Respondent founded and chaired. In June 2002, the same client signed a promissory note in which she made a loan to the Charity. In June 2003, another client of Respondent made a loan to Respondent’s company.

In October 2007, Respondent signed a second Consent Order (“2007 Consent Order”) issued by the SSD. The 2007 Consent Order found that Respondent violated the same provisions of the state securities act and state code that were mentioned in the 2001 Consent Order when he: 1) continued to sell unregistered securities; and 2) continued to borrow money from clients. The SSD found that Respondent had violated the terms of the 2001 Consent Order.

III. Commission’s Analysis and Conclusions Regarding Rule Violations

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

The Commission found that Respondent failed to exercise reasonable and prudent professional judgment because he continued to sell unregistered securities and to make loans with clients, even though he had been previously disciplined for the same acts, which were found to be violations of state law. Thus, Respondent violated Rule 201.

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B. *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 did not perform services in accordance with applicable laws, rules and regulations because he violated the terms of the 2001 Consent Order when he continued to sell unregistered securities and borrow money from clients in violation of provisions of the state securities act and state code. Thus, Respondent violated Rule 606(a).

C. *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 did not perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board because he violated Rules 201, 606(a) and 607, as discussed herein. Thus, Respondent violated Rule 606(b).

D. *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 because he violated Rules 201, 606(a) and 606(b). Thus, Respondent violated 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 which violates CFP Board's *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated the *Code of Ethics* rules discussed above.

The Commission issued a Public Letter of Admonition pursuant to Article 4.2 of the *Disciplinary Rules*. The Commission also ordered Respondent to complete three hours of continuing education in ethics in the six months following the Commission's decision, in addition to the 30 hours required for renewal of his certification. The Commission considered no aggravating or mitigating factors.

V. Appeals Committee Decision

Respondent appealed the Decision pursuant to Article 11 of the *Disciplinary Rules*. The Appeals Committee found that Respondent failed to prove that the Commission's findings and/or the discipline imposed were clearly erroneous, and thus affirmed the findings and discipline imposed against Respondent by the Commission.