

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES

NUMBER 15982

This is a summary of a Settlement Agreement approved at the June 2010 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* when he: 1) failed to clarify his lack of involvement in recommending and endorsing a particular investment to his clients; and 2) executed transactions on a client’s behalf without first confirming that the proper written authorization was in place.

II. Findings of Fact

In October 2003, Respondent’s clients filed a Statement of Claim in a National Association of Securities Dealers (“NASD,” now known as the Financial Industry Regulatory Authority or “FINRA”) Arbitration against Respondent and his employer alleging Respondent repeatedly made unsuitable investment recommendations, sold them investments that had not been approved by the firm, and misrepresented and omitted facts surrounding the investments.

In 1998, Respondent’s brother, an attorney, presented a particular investment opportunity to the clients. The clients invested \$250,000 structured as a loan secured by a promissory note. Contemporaneously with the first note, Respondent and his brother recommended that the clients loan an additional \$250,000. The clients alleged Respondent and his employer failed to disclose the risks of the investment transactions and the commissions involved. The clients asked for \$996,000 in compensatory damages and punitive damages.

In his Answer, Respondent stated the clients decided on the investment without any recommendation from Respondent, and the clients were experienced investors. Respondent also stated that he informed the clients that the investment was a high risk investment.

The NASD Arbitration Panel awarded the clients \$400,000, and found that: 1) the investment in question was created and operated by Respondent’s brother and others outside of Respondent’s employer, rather than Respondent or his employer; 2) presumed involvement of Respondent and Respondent’s employer lent credibility to the investment; 3) Respondent could have easily clarified his role in the investment to the clients by stating in writing he had no involvement with the investment; 4) Respondent failed to apply good judgment and care; and 5) Respondent did not observe the high standards of commercial honor and just and equitable principles of trade required by NASD Conduct Rule 2110.

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Respondent was later terminated by his employer for directing a client associate to pay a client's bills by signing the client's name to checks over an extended period of time without proper documentation.

III. Rule Violations

- A. *Rule 102 – Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly making 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*

Respondent failed to state in writing that he had no involvement with the investment and the clients would be on their own. By failing to provide his clients with written disclosures, Respondent misled his clients into believing he and his employer endorsed the investment. Therefore, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. Thus, Respondent violated Rule 102.

- B. *Rule 201 – Failing to exercise reasonable and prudent professional judgment in providing professional services*

Respondent failed to state in writing that he had no involvement with the investment and the clients would be on their own. By failing to notify his clients that neither he nor his firm had any involvement in the investment, Respondent failed to exercise reasonable and prudent professional judgment in providing professional services. Thus, Respondent violated Rule 201.

- C. *Rule 406 – Failing to perform professional services with dedication to the lawful objectives of the employer and in accordance with this Code of Ethics*

Respondent was terminated by his employer for executing transactions on a client's behalf without confirming that the proper written authorization was in place. As a result, Respondent was terminated by his employer. Based on this conduct, Respondent failed to perform professional services with dedication to the lawful objective of the employer. Thus, Respondent violated Rule 406.

- D. *Rule 606(a) – Failing to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities*

Respondent failed to state in writing that he had no involvement with the investment and the clients would be on their own. By failing to notify his clients that neither he nor his firm had any involvement in the investment, Respondent violated NASD Conduct Rule 2110. As a result, Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities. Thus, Respondent violated Rule 606(a).

- E. *Rule 606(b) – Failing to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board*

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Respondent failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when he: 1) failed to notify his clients that neither he nor his firm had any involvement with the investment; 2) failed to confirm that the proper authorization was in place prior to executing client transactions; and 3) violated Rules 102, 201, 406, 606(a), 607 and 701. Thus, Respondent violated Rule 606(b).

F. *Rule 607 – Engaging in any conduct reflecting adversely on the integrity or fitness as a CFP Board designee, upon the marks, or profession*

Respondent engaged in conduct that reflected adversely on his integrity or fitness as a CFP Board designee, upon the marks, and upon the profession when he: 1) failed to notify his clients that neither he nor his firm had any involvement with the investment; 2) failed to confirm that the proper authorization was in place prior to executing client transactions; and 3) violated Rules 102, 201, 406, 606(a), 606(b) and 701. Thus, Respondent violated Rule 607.

G. *Rule 701 – Failing to provide services diligently*

Respondent failed to provide services diligently when he: 1) failed to notify his clients that neither he nor his firm had any involvement with the investment; and 2) failed to confirm that the proper authorization was in place prior to executing client transactions. Thus, Respondent violated Rule 701.

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 102, 201, 406, 606(a), 606(b), 607 and 701 of the *Code of Ethics*. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the above Findings of Fact and Rule Violations. Pursuant to the Settlement Agreement, the Commission issued to Respondent a Private Censure.

In mitigation, the Commission considered that Respondent advised the clients not to invest in the private note. The Commission did not consider any aggravating factors.