

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 16145

This is a summary of a Settlement Agreement entered into at the February 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* were Rules 101 through 705.

I. Issues Presented

Whether a CFP[®] professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) treated a client’s payments as nontaxable gifts rather than taxable income; 2) did not disclose the income on his 2000 and 2001 state and federal tax returns; 3) did not disclose to a client the potential for a conflict of interest in serving as the appointed trustee of a trust and as an investment adviser for the trust; 4) double and triple charged clients for services; and 5) failed to disclose commissions.

II. Findings of Fact

In November 2003, the Client and other clients of Respondent filed a customer complaint against Respondent alleging \$3,500,000 in damages that evolved into a civil suit (“Civil Suit”). The Civil Suit was settled in August 2004 for \$430,000. In September 2004, a CFP[®] professional filed a grievance with CFP Board alleging that Respondent had violated several of CFP Board’s rules. The grievance was related to the Civil Suit.

In the September 2004 grievance, the Grievant alleged that Respondent:

1. improperly requested that the Client pay Respondent’s family members asset management fees and identify the payments as “gifts”;
2. charged the Client exorbitant fees, gave negligent advice on several planning issues and did not disclose a conflict of interest in serving as both trustee and investment advisor;
3. did not obtain training for areas in which he was inexperienced;
4. double and triple billed the Client for fees and commissions that were not adequately disclosed when he hired fee-based managers and his own advisory service and accounting firm;
5. provided negligent tax advice to the Client when there were other more appropriate planning structures that would have better served the Client;
6. did not inform his accounting firm partners that he was receiving compensation for investment advisory services outside of the normal business of the accounting firm; and
7. was not registered with the Department of Securities until after the Client terminated his services.

In February 2005, the State Board of Accountancy (“SBOA”) began an investigation of Respondent related to the Civil Suit. In May 2009, the SBOA handed down a final order in the case, finding that Respondent:

1. engaged in fraud and violated State law;
2. treated payments as gifts in a calculated and willful attempt to avoid tax liability;
3. involved the Client and Respondent’s own family in a fraudulent scheme to evade taxes;
4. engaged in a pattern of deceitful conduct that occurred over a two-year period and directed the Client to write checks in a manner that assisted Respondent in avoiding taxes on six separate occasions; and
5. egregiously breached his ethical duty and demonstrated a methodical, sustained and willful disregard of his duty to his client.

The SBOA suspended Respondent for two years in May 2009, followed by two years of probation and heightened supervision.

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.*

Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation because he: 1) treated a substantial portion of the Client’s payments as nontaxable gifts rather than taxable income, and failed to disclose the income on his 2000 and 2001 state and federal tax returns; and 2) directed the Client to write checks in a manner that would further his scheme to avoid payment of taxes on six separate occasions. Thus, Respondent violated Rule 102.

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

Respondent failed to exercise reasonable and prudent professional judgment in providing professional services because he: 1) treated the payments from the Client as gifts when he knew they were not, and that his treatment of the payment as gifts was inconsistent with authority to the contrary; and 2) involved the Client and his own family in his fraudulent scheme to evade taxes. Thus, Respondent violated Rule 201.

- C. *Rule 401(a) – In rendering professional services, a CFP Board designee shall disclose to the client material information relevant to the professional relationship, including, conflict(s) of interest, the CFP Board designee’s business affiliation, address, telephone number, credentials, qualifications, licenses, compensation structure and any agency relationships, and the scope of the CFP Board designee’s authority in that capacity.*

Respondent failed to disclose to the Client material information relevant to the professional

relationship because he: 1) did not disclose to the Client the conflict of interest which existed by virtue of Respondent advising the Client to create a trust and serving as the appointed trustee of the trust; and 2) did not disclose to the Client the double and triple charging for services provided by Respondent. Thus, Respondent violated Rule 401(a).

D. Rule 402 – A CFP Board designee in a financial planning engagement shall make timely written disclosure of all material information relative to the professional relationship. In all circumstances and prior to the engagement, a CFP Board designee shall, in writing: (a) disclose conflict(s) of interest and sources of compensation; and (b) inform the client or prospective client of his/her right to ask at any time for information about the compensation of the CFP Board designee.

Respondent failed to make timely written disclosure of the above-mentioned conflicts of interest and sources of compensation. Thus, Respondent violated Rule 402(a).

E. Rule 405 – A CFP Board designee's compensation shall be fair and reasonable.

Respondent failed to charge fair and reasonable compensation because he doubled and tripled billed the client for fees and commissions that were not adequately disclosed. Thus, Respondent violated Rule 405.

F. 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.

Respondent failed to perform professional services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when by violating state law as set forth in the SBOA final order. Thus, Respondent violated Rule 606(a).

G. 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.

Respondent failed to perform professional services in accordance with applicable rules, regulations and other established policies of CFP Board when he violated Rules 102, 201, 401(a), 402(a), 405, 606(a), and 607. Thus, Respondent violated Rule 606(b).

H. 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.

Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks and upon the profession when he: 1) treated a substantial portion of the Client's payments as nontaxable gifts rather than taxable income, and failed to disclose the income on his 2000 and 2001 state and federal tax returns; 2) directed the Client to write checks

in a manner that would further his scheme to avoid payment of taxes; 3) involved the Client and his own family in his fraudulent scheme to evade taxes; 4) failed to disclose to the Client the conflict of interest which existed by virtue of Respondent advising the Client to create a trust and serving as the appointed trustee of the trust; 5) failed to disclose to the Client the double and triple charging for services; and 6) violated State law. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

Article 3(a) of the *Disciplinary Rules and Procedures* (“*Procedures*”) states that any act or omission that violates provisions of the *Code of Ethics* constitutes grounds for discipline. The Commission found Article 3(a) grounds for discipline because Respondent violated the *Code of Ethics* Rules discussed above.

Respondent and CFP Board entered into a Settlement Agreement in which Respondent consented to the above Findings of Fact and Rule Violations. Based on the terms of the Settlement Agreement, the Commission issued a suspension of Respondent’s right to use the CFP® marks for five years, pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission considered as a mitigating factor that Respondent had no prior disciplinary cases.

The Commission cited the following aggravating factors: 1) Respondent is a Certified Public Accountant and should have known that his treatment of payments from the Client as gifts was not supported by the prevailing law at the time; 2) the Client was unsophisticated and prone to memory lapses; and 3) Respondent’s failure to accept responsibilities for his decision to accept fee payments as gifts.