

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 16726

This is a summary of a decision issued following the November 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 candidate for CFP® certification (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) Made exaggerated statements and improper projections about clients’ accounts; 2) Prepared and/or used documents that had not been approved by a registered principal of Respondent’s firm; 3) Failed to retain records showing which sales materials were disseminated to customers; and 4) Failed to disclose a 2003 civil suit and a 2003 National Association of Securities Dealers (“NASD”) arbitration on the Declaration Section of his Initial Application for CFP® Certification.

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

In February 2003, Respondent and several other individuals were named in a class action civil lawsuit (“2003 Civil Suit”). The lawsuit alleged that the financial consulting services sold and provided by Respondent and the other Defendants and the resulting planning goals produced by them centered around a false or misleading premise – that the plan return or minimum gross rates of return could be 12% every year for the expected lifetime of the client and the client could receive regular withdrawals of income sufficient to maintain the client’s lifestyle and financial goals without reduction of principal. The matter settled for \$17.6 million. Respondent joined in the settlement, but did not personally contribute to the settlement.

In 2005, NASD initiated an investigation into the matters involved in the 2003 Civil Suit. In April 2007, Respondent signed a Letter of Acceptance, Waiver and Consent (“AWC”) with NASD, which was subsequently accepted by NASD. Without admitting or denying the findings, Respondent consented to the entry of the following findings by NASD: 1) Respondent prepared and/or used sales materials that were not fair and balanced and contained misleading claims, exaggerated statements and improper projections; 2) Respondent prepared and/or used copies of materials that had not been approved by a registered principal; and 3) Respondent failed to retain records showing which sales materials were disseminated to customers, which registered principal approved the items, and the date of the approval. In signing the AWC, Respondent also consented to a 30-day suspension, a fine of \$30,000 and 40 hours of continuing education within 60 days of re-association with a member firm following the 30-day suspension.

Before being authorized to use the CFP® certification marks, an individual is required to disclose involvement in any criminal, civil, self-regulatory organization or governmental agency inquiries, investigations or proceedings. Respondent failed to disclose the 2003 Civil Suit and the 2003 NASD Arbitration on the Declaration Section of his Initial Application for CFP® Certification.

III. Commission's Analysis and Conclusions Regarding Rule Violations

- A. *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.*

By failing to disclose the 2003 Civil Suit and the 2003 NASD Arbitration to CFP Board, the Commission found that Respondent engaged in conduct which reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(g) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules"). Article 3(a) provides grounds for discipline for a violation of the *Code of Ethics*. The Commission found Article 3(a) grounds for discipline based upon its finding that Respondent violated Rule 607 of the *Code of Ethics*. Article 3(g) provides grounds for discipline for false or misleading statements to CFP Board. The Commission found Article 3(g) grounds for discipline based upon its finding that Respondent made a false statement on the Declaration Section of his Initial Application for CFP® Certification.

The Commission issued a private censure to Respondent pursuant to Article 4.1 of the *Disciplinary Rules*. The Commission urged Respondent to practice in accordance with all applicable laws and rules, including those of CFP Board, and to review carefully the CFP Board's *Code of Ethics* and *Financial Planning Practice Standards* to ensure future compliance therewith.

The Commission considered the following mitigating factors:

1. Respondent was a junior broker of a large team; and
2. The discipline imposed upon Respondent in the AWC was largely the result of his minor participation on a team, of which several major members received more severe sanctions.

The Commission considered no aggravating factors.