CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 16836

This is a summary of a decision issued following the March 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. Issue Presented

Whether a CFP® certificant ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) implemented an aggressive investment strategy for an elderly client ("Client"); 2) did not inform the Client that she had unrealistic investment expectations; 3) did not review the Client's accounts after implementing the investment; and 4) did not respond to the Client's calls.

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

CFP Board alleged the following facts in its Complaint:

Between 2000 and 2003, Respondent recommended to the Client that she invest in a variable annuity which had the following features: variable sub-accounts; a one-year fixed rate; no contingent deferred sales charges; 100 percent liquidity; and death benefit guarantees. The Client made monthly withdrawals of $800 from the annuity to supplement her social security payments. By April 2003, the amount in the variable annuity account had declined by 56 percent from the initial investment.

In a letter to CFP Board in March 2005, Respondent stated that the Client had a withdrawal goal of 10 percent per year and wanted to have 100 percent access to her funds. Respondent stated in the letter that there were no conservative investments available that would meet the Client's goal.

According to the Client's allegations in an arbitration she filed with the National Association of Securities Dealers ("NASD"), Respondent told the Client that some of the funds in the variable annuity would be invested in more aggressive mutual funds, where there was a risk of loss of principal, but that the majority of her funds would never be in jeopardy.

The Client informed CFP Board that she telephoned and sent letters to Respondent for over a year to arrange a meeting, but did not receive a response until she threatened to file a grievance with CFP Board in November 2004.

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 in providing professional services when he: 1) implemented an aggressive investment strategy that was inappropriate for the Client; and 2) did not advise the Client that her return and withdrawal expectations were unrealistic. Thus, Respondent violated Rule 201.

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

The Commission found that Respondent failed to provide services diligently because: 1) he did not review the Client's allocations and accounts on an ongoing basis; and 2) he failed to document incoming calls and his responses to those calls. 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 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 a Private Censure to Respondent pursuant to Article 4.1 of the *Disciplinary Rules*. The Commission ordered Respondent to: 1) complete eight hours of continuing education in client communications and suitability; 2) complete four hours of continuing education in investment planning; and 3) report to CFP Board the outcome of the arbitration.

The Commission considered the following mitigating factors:

1. Respondent clearly values the CFP® marks; and
2. A registered investment advisory representative testified that Respondent had a better advisory process than the typical representative at Respondent's firm of over 300 representatives.

The Commission considered the following aggravating factors:

1. Respondent's lack of remorse and sympathy for the Client's situation;
2. The Commission's determination that Respondent's conduct lacked the professional objectivity needed to work with clients;
3. Respondent's failure to recognize the significance of the Client's poor investment results, poor choice in making aggressive withdrawals and financial situation; and
4. Respondent's acknowledgment during the hearing that he was partly responsible for the Client's poor financial situation.