

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 17262

This is a summary of a decision issued following 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) allowed a Financial Industry Regulatory Authority (“FINRA”) member firm (“Firm”), of which he was the Chief Compliance Officer, to participate in securities offerings during its suspension without satisfying the requirements of the suspension; 2) allowed a representative of the Firm (“Representative”) to act as a principal when the Representative had been suspended by the National Association of Securities Dealers (“NASD,” now known as FINRA) from acting in any principal capacity; 3) processed commissions from securities offerings through a non-member company; and 4) was subject to three FINRA arbitrations and one state securities division investigation.

II. Findings of Fact

In April 2005, a grievance (“2005 Grievance”) was filed with CFP Board alleging that Respondent selected unsuitable investments for the Individual Retirement Account (“IRA”) rollover account of the client (“Client 1”). Client 1 filed an NASD arbitration against Respondent, the Firm and other parties. In January 2007, Client 1 signed a Settlement Agreement and Mutual Release agreeing to dismiss the arbitration with prejudice.

While investigating the 2005 Grievance, CFP Board discovered Respondent’s involvement in a 2006 NASD investigation that included Respondent, the Firm and the Representative. The Representative founded the Firm in 1994. In 2003, Respondent became the Firm’s President and Chief Compliance Officer.

Respondent, the Firm and the Representative submitted offers of settlement to FINRA, which FINRA accepted in a January 2008 Order (“FINRA Order”). According to the FINRA Order, the Representative and the Firm were disciplined as a result of a previous NASD action (“NASD Discipline”). The NASD Discipline suspended the Firm from participating in any public or private securities offering in the capacities of lead underwriter, primary placement or sale agent unless the firm retained an independent consultant. The firm’s suspension was in effect from March 2003 until April 2005. The NASD Discipline suspended Representative from associating

with any FINRA member firm from May 2003 until June 2003 and from acting in a principal capacity from May 2003 until August 2004.

According to the FINRA Order, between April 2003 and August 2004, the Firm participated in four securities offerings (“Offerings”) as a primary placement or sales agent without satisfying the independent consultant requirement imposed by the NASD Discipline. The Representative acted as a General Securities Principal of the firm from May 2003 until August 2004. FINRA found that Respondent violated NASD Conduct Rules 2110 and 3010 by: 1) failing to supervise the Representative to prevent him from functioning as a principal while suspended; and 2) knowingly or recklessly permitting the Firm to participate in the Offerings without satisfying the independent consultant requirement.

Also according to the FINRA Order, from January 2003 to December 2003, FINRA found that Respondent, the Firm and the representative violated NASD Conduct Rules 2420 and 2110 when the Firm, acting through Respondent and the Representative, processed commissions from the Offerings through a non-member company owned by Respondent. The non-member company accepted payments for the Offerings from the issuer on behalf of the Firm and paid the commissions to the Firm’s registered representatives.

Pursuant to the FINRA Order, Respondent and the Representative were barred from associating with any FINRA member in any capacity and the Firm was expelled from FINRA membership.

While conducting its investigation, CFP Board also discovered Respondent’s involvement in two 2007 FINRA arbitrations. The first 2007 arbitration arose from a complaint filed by a client (“Client 2”) who alleged that Respondent recommended a real estate investment that caused Client 2 to lose money due to improper recording of title. In December 2007 the parties entered into a Stipulation of Dismissal with Prejudice regarding the arbitration. The second 2007 arbitration was filed by a client (“Client 3”) who alleged failure to supervise and misrepresentation of a private placement sale. Client 3 also filed a civil suit naming Respondent, the firm and the Representative as defendants. In March 2008, Client 3, Respondent, the firm and the Representative entered into a Stipulated Motion to Dismiss Respondent, the firm and the Representative from the civil suit. The same parties also entered into a Stipulation of Dismissal with Prejudice from the 2007 FINRA arbitration.

III. 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) failed to supervise the Representative; 2) permitted the firm to participate in offerings while under NASD discipline; and 3) allowed commissions paid to the firm’s representatives to pass through a non-member company. Thus, Respondent violated Rule 201.

B. Rule 406 – A CFP Board designee who is an employee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with this Code of Ethics.

The Commission found that Respondent failed to perform professional services with dedication to the lawful objectives of his employer when he engaged in conduct that led to: 1) violations of NASD Conduct Rules 2110, 2420 and 3010 by himself, the firm and the Representative; 2) a FINRA bar; and 3) the firm's expulsion from FINRA. Thus, Respondent violated Rule 406.

C. 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 failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he violated NASD Conduct Rules 2110, 2420 and 3010. Thus, Respondent violated Rule 606(a).

D. 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 failed to perform services in accordance with CFP Board rules, regulations and policies when he violated *Code of Ethics* Rules 201, 406, 606(a) and 607 as discussed herein. Thus, Respondent violated Rule 606(b).

E. 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 that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks and upon the profession when he: 1) failed to supervise the activities of the firm and the Representative; 2) engaged in conduct that led to violations of NASD Conduct Rules; 3) engaged in conduct that led to a lifetime bar from FINRA and the expulsion of the firm from FINRA membership. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(d) and 3(e) of the *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 because Respondent violated the *Code of Ethics* rules discussed above. Article 3(d) provides grounds for discipline for any act which is the proper basis of professional suspension. The Commission found Article 3(d) grounds for discipline because Respondent engaged in acts which are the proper basis for professional suspension and received a lifetime bar from FINRA

as a result. Article 3(e) provides grounds for discipline for any act or omission which violates the *Disciplinary Rules*. The Commission found Article 3(e) grounds for discipline because Respondent failed to notify CFP Board of his bar within 10 days calendar days of the bar, as required by Article 12.2 of the *Disciplinary Rules*, and because his failure to supervise allowed the firm and the Representative to violate the NASD Discipline. Pursuant to Article 4.4 of the *Disciplinary Rules*, the Commission issued the Respondent an Order to Revoke Permanently the Respondent's right to use the CFP® marks.

The Commission considered no mitigating factors in making its decision. The Commission considered the following aggravating factors in making its decision: 1) at hearing, Respondent appeared to desire the marks to promote his other business; 2) Respondent did not acknowledge responsibility for his actions and 3) Respondent showed reckless disregard of the responsibilities to inquire about past and current business activities of the firm for which he served as Chief Compliance Officer.