

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 17554

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

Whether a candidate for CFP® certification (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* (“*Standards*”) when he completed a client’s (“Client”) life insurance application inaccurately, resulting in the Client’s wife (“Client’s Wife”) being denied benefits under the Client’s life insurance policy after the Client’s death.

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

In June 2005, Respondent disclosed his involvement in a pending civil suit on his Initial Certification Application. Later in 2005, the Client’s Wife filed a complaint against Respondent and his partner (“Partner”) in a state court alleging breach of contract, negligence and misrepresentation due to an inaccurate answer listed on the Client’s life insurance application, which resulted in denial of her claim for benefits under the Client’s life insurance policy (“Policy”) after the Client’s death. In a Settlement Agreement entered into with the Commission, Respondent consented to the facts presented below.

During a meeting in February 2004, the Client and Client’s Wife met with the Partner. The Partner recommended that they purchase an individual term life insurance policy for \$1 million for the Client and \$250,000 for the Client’s Wife. Additionally, the Partner recommended that the Client and Client’s Wife drop their then-existing \$300,000 individual term life insurance policy (“Term Life Policy”). During the meeting, the Partner informed the Client and Client’s Wife that they would receive insurance applications in the mail requiring their signatures. The Client and Client’s Wife completed and signed their respective applications. The applications were signed by Respondent, not the Partner, because the Partner had not been appointed to sell life insurance products for the issuer (“Issuer”).

According to Respondent’s attorney, during a telephone interview with the Client, Respondent completed the life insurance application for the Client and re-confirmed an answer given by the Client during the initial meeting with the Partner that the Client had no driving under the influence (“DUI”) convictions during the past five years. After the Policy was issued, the Client allowed the Term Life Policy to lapse.

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The Client died as a result of a single vehicle car accident. The Issuer denied the Client's Wife's claim for benefits under the Policy based on the fact that the Client had answered inaccurately a question on the application regarding a prior DUI conviction in 2002.

The state court found that Respondent was liable under theories of breach of fiduciary duty, negligence, and negligent misrepresentation in connection with the denial of benefits under the Policy. The state court found that Respondent failed to exercise reasonable care when he inaccurately represented on the Client's Policy application that the Client had not had a DUI charge or conviction or other driving violation in the past five years. According to the state court, Respondent knew or should have known that the inaccurate answer on the Policy application would void the coverage under the Policy.

The Client's Wife claimed Respondent made the misrepresentation on the Client's Policy application and did not review the application with the Client and the Client's Wife. The Client's Wife contended that had she and the Client had been given the opportunity to review the application, they would have realized that the question was answered incorrectly. The Client's Wife also contended that Respondent was negligent in failing to review governmental motor vehicle records, despite having the Client's express authorization to do so, to corroborate and verify the answers on the Client's life insurance application. The Court agreed and found that Respondent was willfully and knowingly reckless, and deceptive, in violation of the state Consumer Protection Act.

III. Commission's Analysis and Conclusions Regarding Rule Violations

A. *Rule 701— A CFP Board designee shall provide services diligently.*

The Commission determined that Respondent failed to provide services diligently by: 1) being deemed liable for the loss of the Client's Policy by the state court; and 2) negligently failing to review governmental motor vehicle records to corroborate and verify the answers on the Client's Policy application. Thus, Respondent violated Rule 701 of CFP Board's *Code of Ethics*.

IV. Discipline Imposed

Respondent submitted an Offer of Settlement to the Commission. The Commission proposed a Counter-Offer to the Respondent of a Private Censure. The Respondent accepted the Counter-Offer, wherein he acknowledged the above facts and rule violations. The Commission issued a Private Censure to Respondent in accordance with the Settlement Agreement.

The Commission considered no mitigating or aggravating factors.