CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 17640

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

Whether a candidate for CFP® certification ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) did not meet with a client ("Client") regarding a discrepancy in the number of checks written from the Client's Cash Management Account ("CMA"), which was later found to involve unlawful activity by the Client's health care aide; and 2) did not bring the matter to his branch manager's attention.

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

In July 2005, Respondent disclosed to CFP Board that he was named in a Financial Industry Regulatory Authority ("FINRA", f/k/a National Association of Securities Dealers or "NASD") Arbitration by the Client's Estate for alleged violations of NASD rules. Respondent was the Client's broker until the Client's death in 2002. The Client was 88 years old at the time of his death.

The Client opened Cash Management Account ("CMA") with Respondent in 1998. The Client wrote no checks on the CMA between 1997 and 1999. In 1999, the Client hired a health care aide. Beginning in 2000, checks were written out of the CMA as follows: 1) $960.00 in 2000; 2) $59,104.58 in 2001; and 3) $165,470.00 in 2002. The withdrawals were in excess of $350,000.00, including margin loans and accrued margin interest on those loans.

In 2001, Respondent became concerned about the withdrawal activities and increase in margin. Respondent kept notes of his conversations or attempts to communicate with the Client. According to the notes, the Client did not return Respondent's messages. According to the notes, in June 2002, Respondent called the Client about the checks written on the CMA and realized for the first time that the Client was having problems comprehending what Respondent was trying to tell him. During the call, according to the notes, Respondent promised to visit the Client to discuss the account in person. Respondent did not visit the Client and did not attempt to call the Client again.

According to Respondent's broker-dealer's policy manual, the broker-dealer's policy was to have a face-to-face meeting with a client when it became clear that a client could no longer communicate by telephone. According to the transcripts from the FINRA Arbitration, the policy required a review of monthly statements to identify long standing problems that should have been brought to the attention of a branch manager.

In August 2004, the Client's health care aide was indicted on a charge of Grand Larceny in the third degree for the theft of the Client's investment funds from his brokerage account. The health care aide has not been apprehended. Later in 2004, the FINRA Arbitration panel found that Respondent and his broker-dealer were jointly and severally liable to the Client's Estate and ordered them to pay compensatory damages, plus interest. In 2005, a state court upheld the FINRA decision and found that the broker-dealer had improperly monitored the CMA, which allowed the Client's health care aide to write hundreds of thousands of dollars in checks against the account.

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 should have taken the following steps to protect the Client's CMA: 1) noticed the irregularity in the Client's past withdrawals; 2) noticed that the Client's CMA was being depleted; and 3) met in person with the Client when it became clear that Respondent could no longer communicate with the Client by telephone. The Commission determined that Respondent failed to exercise reasonable and prudent professional judgment because he failed to take steps to protect the Client's CMA, even after he became aware that checks were being written against the account with greater frequency. 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 services with dedication to the lawful objectives of his employer and in accordance with the *Code of Ethics* because he failed to report to his branch manager the increasing frequency of checks being written against the Client's CMA and the increasing margin balance on the CMA. Thus, Respondent violated Rule 406.

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

The Commission found that Respondent failed to provide services diligently because he failed to render services in a reasonably prompt and thorough manner when he failed to: 1) monitor the Client's CMA; 2) prevent further loss on the CMA; and 3) visit the Client as promised. 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 *Code of Ethics* Rules 201, 406 and 701.

The Commission issued a Private Censure to Respondent pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors:

1. Respondent maintained notes of his communications with the Client;
2. Respondent expressed remorse for his failure to act; and
3. Respondent had an otherwise clean record in the industry.

The Commission considered no aggravating factors.