

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 18109

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. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* (“Standards”) when he pleaded guilty to one count of conspiring to commit tax evasion and one count of tax evasion.

II. Findings of Fact

In February 2004, Respondent was informed he was the subject of an investigation by the U.S. Attorney’s Office regarding tax shelters marketed by Respondent’s accounting firm. As a result of the investigation, Respondent began cooperating with the government in May 2004. In October 2005, Respondent was arraigned on charges relating directly to the tax shelters his firm developed and sold in 1999 and 2000.

In March 2006, Respondent pleaded guilty to: 1) one count of conspiring to defraud the United States, namely the Internal Revenue Service (“IRS”), by knowingly and willfully agreeing with others to design, market, implement and conceal a series of fraudulent tax shelters while employed as a tax partner at his firm, in violation of 18 U.S.C. § 371; and 2) one count of tax evasion by knowingly and willfully attempting to evade income taxes due and owing from tax shelter clients, in violation of 26 U.S.C. § 7201. Prior to Respondent’s plea agreement, Respondent entered into a cooperation agreement with the U.S. Government and Respondent’s sentencing was deferred. In July 2009, Respondent was sentenced to one year of probation and a penalty assessment of \$200.

III. Rule Violations

A. *Rule 102 Violation – Engaging in Conduct involving Dishonesty, Fraud, Deceit or Misrepresentation, or Knowingly make a False or Misleading Statement to a Client, Employer, Employee, Professional Colleague, Governmental or other Regulatory Body or Official, or any Other Person or Entity*

The Commission determined Respondent pleaded guilty to one felony count of Conspiracy to Commit Tax Evasion, and one felony count of Tax Evasion, for assisting in the implementation

of fraudulent tax shelters, and for illegally concealing clients' income taxes. Based on this conduct, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. Thus, Respondent violated Rule 102.

B. *Rule 201 Violation – Failing to Exercise Reasonable and Prudent Professional Judgment in Providing Professional Services*

The Commission determined Respondent pleaded guilty to one felony count of Conspiracy to Commit Tax Evasion, 18 U.S.C. § 371, and one felony count of Tax Evasion, 26 U.S.C. § 7201, for assisting in the implementation of fraudulent tax shelters, and for illegally concealing clients' income taxes. Based on this conduct, Respondent failed to exercise reasonable and prudent professional judgment in providing professional services. Therefore, Respondent violated Rule 201.

C. *Rule 606(a) Violation – Failing to Perform Services in Accordance with Applicable Laws, Rules and Regulations of Governmental Agencies and Other Applicable Authorities*

The Commission determined Respondent pleaded guilty to one felony count of Conspiracy to Commit Tax Evasion, 18 U.S.C. § 371, and one felony count of Tax Evasion, 26 U.S.C. § 7201, for assisting in the implementation of fraudulent tax shelters, and for illegally concealing clients' income taxes. Based on this conduct, Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities. Thus, Respondent violated Rule 606(a).

D. *Rule 606(b) Violation — Failing to Perform Professional Services in Accordance with the Applicable Rules, Regulations and Other Established Policies of CFP Board*

The Commission determined Respondent pleaded guilty to one felony count of Conspiracy to Commit Tax Evasion, 18 U.S.C. § 371, and one felony count of Tax Evasion, 26 U.S.C. § 7201, for assisting in the implementation of fraudulent tax shelters, and for illegally concealing clients' income taxes. Based on this conduct, Respondent violated *Code of Ethics* Rules 102, 201, 606(a) and 607, and thus also violated Rule 606(b).

E. *Rule 607 Violation – Engaging in any Conduct Reflecting Adversely on the Integrity or Fitness as a CFP Board Designee, upon the Marks, or Profession*

The Commission determined Respondent pleaded guilty to one felony count of Conspiracy to Commit Tax Evasion, 18 U.S.C. § 371, and one felony count of Tax Evasion, 26 U.S.C. § 7201, for assisting in the implementation of fraudulent tax shelters, and for illegally concealing clients' income taxes. Based on this conduct, Respondent violated *Code of Ethics* Rules 102, 201, 606(a) and 606(b). Thus, Respondent has engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks and upon the profession, in violation of Rule 607.

IV. Discipline Imposed

Under Article 4.3 of the *Disciplinary Rules*, CFP Board may order a suspension of the right to use the CFP® certification marks because it found grounds to discipline the Respondent under Articles 3(a), 3(c) and 3(e) of the *Disciplinary Rules*. The Commission determined that Respondent's conduct violated Rules 102, 201, 606(a), 606(b), and 607 of the *Code of Ethics*. The Commission issued a four-year retroactive suspension to Respondent. It also ordered reinstatement of Respondent's right to use the CFP® certification marks pending Respondent's successful completion of his probation in July 2010.

In mitigation, the Commission considered the following factors:

1. Respondent's extensive cooperation as a witness, consultant, and adviser to the government prosecution;
2. Respondent did not personally gain from the tax-shelter arrangements;
3. Respondent accepted responsibility for his actions;
4. Respondent's sentencing judge's assessment of Respondent's culpability and punishment. The judge acknowledged Respondent's acceptance of responsibility, including Respondent's refusal to withdraw his guilty plea and sentenced Respondent to only one year of probation;
5. Respondent followed through with his clients by assisting them in amending their tax returns and paying back taxes after problems with the tax shelters arose, and before the criminal proceedings;
6. Respondent's notification to CFP Board of his criminal conviction was only 18 days late and Respondent had been in regular contact with CFP Board staff to provide periodic updates; and
7. Respondent was cooperative, forthcoming and contrite.

The Commission considered no aggravating factors.