CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 18761

This is a summary of a decision issued following the February 2011 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: 1) a state securities division sanctioned Respondent's firm ("Firm") for fee- and records-related misconduct; and 2) husband and wife clients ("Clients") filed an arbitration and a civil suit against him alleging misrepresentation and unsuitable investments.

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

Respondent was the sole owner and executive director of the Firm. In June 2005, a state securities division conducted a routine compliance examination of the Firm. As a result of the examination, the state securities division learned that the Firm changed its fee structure and implemented a minimum quarterly fee of $400. The Firm did not file a copy of the amendment to the fee structure with the state securities division.

The state securities division found that: 1) as a result of the amendment to its fee structure, the Firm charged excess fees for accounts falling below a certain dollar threshold; 2) one client was over-billed and not provided proper breakpoint discounts; 3) the Firm did not establish and maintain written supervisory guidelines as required by state law; and 4) the Firm included certain prohibited language in its contractual agreements.

The Firm entered into a Consent Order with the state in which it agreed to: 1) cease and desist from engaging in activities in violation of state law; 2) pay over $10,000 in restitution to the investors adversely affected by the Firm's conduct; and 3) fully comply with state law in all future activities.

In 2006, the Clients filed an arbitration claim against Respondent, the Firm, and Respondent's broker-dealer. The Clients subsequently filed a civil suit against Respondent in 2008. The Clients alleged in both the arbitration and the civil suit that Respondent improperly recommended home equity refinancing for investment purposes. The Clients alleged the recommendation was unsuitable and that Respondent knew that they were risk averse, and had limited liquid assets and disposable income. The Clients claimed in excess of $125,000 in damages. Respondent disputed all of the Clients' allegations.

Respondent's broker-dealer settled the arbitration for $65,000 in October 2007. Respondent was dismissed from the arbitration prior to settlement. In August 2008, the Clients settled the civil suit with the broker-dealer for $72,000. Respondent was dismissed with prejudice from the civil suit prior to settlement.

III. Commission's Analysis and Discipline Imposed

The Commission found no misconduct for the following reasons: 1) the lack of evidence against Respondent in the state Consent Order; 2) that the state regulatory action was taken against the Firm and not Respondent individually; and 3) the age of the underlying allegations in the arbitration and the civil suit.

The Commission dismissed Respondent's matter and issued a caution to Respondent stressing that Respondent should recognize that it is sometimes best to decline to engage certain clients, rather than to execute inadvisable investment strategies. The Commission did not cite any aggravating or mitigating factors.