CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 19075

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 CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* ("*Standards*") when he performed financial planning services for a client's ("Client") father ("Client's Father") without providing to the Client's Father a written financial planning agreement and written disclosures and when he received the Client's Father's funds through a bank account controlled by Respondent.

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

In May 2005, Respondent met with the Client and the Client's Father. During the meeting, Respondent entered into an oral agreement with the Client to manage the Client's Father's financial affairs. Respondent did not obtain a signed agreement and did not complete a client profile of the Client's Father.

In July 2005, based on Respondent's advice, the Client's Father liquidated his personal savings account containing $25,000 and issued a personal check for the same amount payable to Respondent's company ("Company"). Respondent cashed the check in the Company's account and did not create a separate account for the Client's Father. On Respondent's advice, the Client's Father later liquidated his money market account containing approximately $11,000 and gave the proceeds to Respondent to manage.

In January 2006, Respondent opened an escrow account on a deed of trust in the amount of $47,000 using a check made out to Respondent and the Company. The Client's Father did not authorize the opening of the escrow account. The Client's Father subsequently stopped receiving monthly distributions from a broker-dealer acting as custodian of the Client's Father's assets as a result of Respondent's failure to properly fund the account.

Respondent offered to review and make recommendations on the Client's Father's then-current living trust. Respondent prepared a Last Will, Revocable Trust and Durable Power of Attorney for management of Property and Personal Affairs, and charged the Client's Father $400 per hour for preparing the documents. Client's Father had not requested such documents.

In April 2006, the Client's Father asked Respondent to provide him with all the documents pertaining to his investments. As of the hearing date, Respondent had not provided the requested documents to the Client's Father.

In May 2006, Respondent provided the Client's Father with a check for approximately $23,000 and stated that he was withholding $12,800 in fees for services performed for the Client and the Client's Father.

III. Commission's Analysis and Conclusions Regarding Rule Violations

In applying the *Code of Ethics* rules below, the Commission determined that the Client's Father was not a client of Respondent. The relationship and scope of engagement that the Client and Respondent agreed to regarding the services to be provided included Respondent's gathering of data and performing certain tasks for the Client's Father on behalf of the Client. Thus, Respondent's conduct in tasks he performed for the Client's Father was examined under the *Standards* as if he had performed those tasks for the Client.

A. *Rule 103(d) – A CFP Board designee shall not commingle client funds or other property with a CFP Board designee's personal funds and/or other property or the funds and/or property of a CFP Board designee's firm.*

The Commission found that Respondent commingled client funds with his own funds when he deposited the Client's Father's funds into the Company's account, which Respondent controlled and used as the Company's checking account. Thus, Respondent violated Rule 103(d).

B. *Rule 103(e) – A CFP Board designee who takes custody of all or any part of a client's assets for investment purposes, shall do so with the care required of a fiduciary.*

The Commission determined that Respondent failed to act in accordance with the care required of a fiduciary when he cashed the Client's Father's check in the Company's account and did not create a separate account for the Client's Father. Thus, Respondent violated Rule 103(e).

C. *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 because he: 1) failed to clearly outline the scope of the engagement with the Client's Father; 2) failed to clearly identify who his client was; and 3) failed to establish an adequate billing system. Thus, Respondent violated Rule 201.

D. *Rule 202 – A financial planning practitioner shall act in the interest of the client.*

The Commission found that Respondent failed to act in the interest of the client by: 1) creating unnecessary estate planning documents; 2) disrupting the Client's Father's cash flow; 3) not investing the Client's Father's funds; and 4) billing the Client's Father services rendered for the Client. Thus, Respondent violated Rule 202.

E. *Rule 402(a) – A CFP Board designee in a financial planning engagement shall make timely written disclosure of all material information relative to the professional relationship. In all circumstances and prior to the engagement, a CFP Board designee shall, in writing disclose conflict(s) of interest and sources of compensation.*

The Commission found that Respondent failed to provide the client with written disclosure of the: 1) conflict of interest that exists with regard to receiving funds from the Client's Father in Respondent's bank account; 2) compensation arrangement; and 3) client's right to ask for compensation information at any time. Thus, Respondent violated Rule 402(a).

F. *Rule 405 – A CFP Board designee's compensation shall be fair and reasonable.*

The Commission found that Respondent failed to set fair or reasonable compensation when he charged the Client's Father $12,800 for services, some of which were performed for the Client's Father and some of which were performed for the Client. Thus, Respondent violated Rule 405.

G. *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 which reflects adversely on his integrity and fitness, upon the marks and upon the profession because he: 1) engaged in conduct in violation of the *Code of Ethics*; 2) improperly used the CFP® marks; 3) used false advertising materials; and 4) billed the Client's Father in a manner that mischaracterized the actual costs charged to the Client and the Client's Father. Thus, Respondent violated Rule 607.

H. *Rule 610 – A CFP Board designee shall return the client's original records in a timely manner after their return has been requested by a client.*

The Commission found that Respondent failed to return the Client's Father's documents, which were requested in April 2008, by the date of the hearing in July 2008. Thus, Respondent violated Rule 610.

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

The Commission found that Respondent failed to provide services diligently because Respondent failed to review and recommend changes to the Client's Father's living trust and failed to return documents to the Client's Father. Thus, Respondent violated Rule 701.

J. Rule 702(a) – A financial planning practitioner shall enter into an engagement only after securing sufficient information to satisfy the CFP Board designee that the relationship is warranted by the individual's needs and objectives.

The Commission found that there was no evidence to conclude that Respondent secured any information that the client's needs and objectives were met. As a result, the Commission found that Respondent entered into a financial planning engagement with the Client's Father without gathering sufficient information to meet the Client's Father's needs and objectives. Thus, Respondent violated Rule 702(a).

K. Rule 703 – A financial planning practitioner shall make and/or implement only recommendations which are suitable for the client.

The Commission found, according to Respondent's testimony at the hearing, that Respondent did not invest the Client's Father's funds. The Commission determined that Respondent's decision to not invest the funds was unsuitable for the Client's Father. Thus, Respondent violated Rule 703.

IV. <u>Discipline Imposed</u>

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") provides grounds for discipline for any act or omission which violates CFP Board's *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated the *Code of Ethics* Rules discussed above.

The Commission issued an Order to Revoke Permanently the Respondent's right to use the CFP®, CERTIFIED FINANCIAL PLANNER™ and CFP certification marks. The Commission ordered Respondent to verify that he was not using the marks by submitting copies of letterhead and business cards within 30 days of the Order. No mitigating or aggravating factors were considered.

V. <u>Appeals Committee Decision</u>

Respondent appealed the Decision pursuant to Article 11 of the *Disciplinary Rules*. The Appeals Committee found that Respondent failed to prove that the Commission's findings and/or the discipline imposed were clearly erroneous, and thus affirmed the findings and discipline imposed against Respondent by the Commission.