

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 19812

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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. Issues Presented

Whether a CFP<sup>®</sup> certificant (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* (“Standards”) when a state civil court (“State Court”) found him liable for violation of a state Consumer Protection Act after the wife (“Wife”) of a former client (“Client”) lost her claim for benefits due to an inaccurate answer on the Client’s life insurance application.

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

In September 2006, Respondent disclosed his involvement in a pending civil suit on his Initial Certification Application. In 2005, the Wife filed a complaint against Respondent and his partner (“Partner”) in the State Court alleging breach of contract, negligence and misrepresentation due to an inaccurate answer on the Client’s life insurance application, which resulted in denial of the Wife’s claim for benefits after the Client’s death. In a Settlement Agreement entered into with the Commission, Respondent consented to the facts presented below.

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

According to Respondent’s attorney, during a telephone interview, Respondent completed a life insurance application for the Client with Issuer for \$1,00,000.00 (“Policy”) and the Client reiterated his answer given during the initial meeting with the Partner that client had no driving under the influence (“DUI”) convictions in the past five years. After the Policy was issued, the Client allowed the Term Life Policy to lapse.

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The Client passed away as a result of a single vehicle car accident. The Issuer denied the Client's Wife's claim for benefits based on the fact that the Client had answered inaccurately to 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 loss of the Policy. The State Court found that Respondent failed to exercise reasonable care when he inaccurately represented on the Client's Policy application that he 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 was void and the Issuer would refuse to pay the Client's Wife the benefits due under the Policy in the event of client's untimely death.

The State Court found that Respondent failed to exercise reasonable care when he and his Partner made the inaccurate representation on the Policy application. The Client's Wife claimed Respondent made the misrepresentation on the Client's Policy application without going over the application with the Client and his Wife, and had Respondent done so, they would have realized that the question was answered incorrectly. The Client's Wife also claimed that Respondent was negligent in failing to inquire into 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 State 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 by being deemed liable for the loss of client's policy by the Court and by Respondent's negligence to inquire into governmental motor vehicle records to corroborate and verify the answers on the Client's Policy application, Respondent failed to provide services diligently. 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 Offer of Settlement, and the Commission and Respondent came to a Settlement Agreement consenting to the above facts and reasoning. The Commission issued a Private Censure to Respondent in accordance with the Settlement Agreement.

The Commission considered no mitigating or aggravating factors.