

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 19834

This is a summary of a Settlement Agreement approved at 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* when he obtained waivers of Contingent Deferred Sales Charges (“CDSCs”) for approximately 14 customers by claiming that these customers were disabled, when, in fact, they were not.

II. Findings of Fact

In February 2006, the National Association of Securities Dealers (“NASD, now known as the Financial Industry Regulatory Authority or “FINRA”) filed a Complaint against Respondent alleging the following: 1) from October 2001 through June 2002, Respondent obtained improper CDSC waivers for 14 customers involving 31 mutual fund redemptions by falsely representing that these customers were disabled; 2) Respondent earned approximately \$100 in commissions on approximately \$370,000 in redemptions with approximately \$11,000 in CDSC waivers; 3) mutual fund companies were deprived of fees to which they were otherwise entitled; and 4) Respondent caused his employer’s books and records relating to the 31 redemptions to contain false and misleading information regarding the disability status of its customers. Based on these factual allegations, NASD alleged Misrepresentation and Creating False Books and Records, in violation of NASD Conduct Rules 2110 and 3110. NASD found that Respondent admitted obtaining waivers for CDSCs by falsely claiming those customers were disabled. The Panel did not believe Respondent’s assertion that requests for disability waivers were accidental, given the electronic order entry system process used by Respondent’s employer. The Panel found Respondent violated NASD Conduct Rules 2110 and 3110. The Panel permanently barred Respondent from association with any firm in any capacity. No fine was imposed.

Respondent filed his Notice of Appeal with the National Adjudicatory Council (“NAC”) in April 2007. In April 2008, the NAC issued its decision, focusing solely on Respondent’s intent when entering the waivers. The NAC found that “given the physical layout of a computer keyboard” and the exculpatory direct and circumstantial evidence provided by Respondent, the record was insufficient to prove that Respondent acted deliberately in entering the CDSC disability waivers.

The NAC modified the Hearing Panel's sanction to eliminate the Bar and imposed a \$5,000 fine. This fine was a sanction within the lower end of FINRA's Sanction Guidelines for a negligent violation of FINRA's recordkeeping rules. The NAC also determined:

1. Respondent had only minimal monetary gain of approximately \$100 in net commissions;
2. Respondent's conduct did not harm any customers; and
3. Respondent's injury to the mutual fund distributors, approximately \$8,000 in forgone commissions, was nominal and was reimbursed by Respondent's employer.

III. Rule Violations

A. *Rule 102 – In the course of professional activities, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly making 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*

Respondent obtained waivers of CDSCs for approximately 14 customers by claiming that these customers were disabled, when, in fact, they were not. By misrepresenting that these customers were disabled, Respondent engaged in conduct involving dishonesty, deceit and misrepresentation. Thus, Respondent violated Rule 102.

B. *Rule 201 – Failing to exercise reasonable and prudent professional judgment in providing professional services*

Respondent obtained waivers of CDSCs for approximately 14 customers by claiming that these customers were disabled when, in fact, they were not. By misrepresenting that these customers were disabled, Respondent failed to exercise reasonable and prudent professional judgment in providing professional services. Thus, Respondent violated Rule 201.

C. *Rule 406 – Failing to perform professional services with dedication to the lawful objectives of the employer and in accordance with this Code of Ethics*

Respondent obtained waivers of CDSCs for approximately 14 customers by claiming that these customers were disabled when, in fact, they were not. These actions caused Respondent's employer's books and records regarding the mutual fund redemptions to be inaccurate, in violation of firm policy. By failing to keep accurate books and records on his clients, Respondent failed to perform professional services with dedication to the lawful objectives of the employer and in accordance with this *Code of Ethics*. Thus, Respondent violated Rule 406.

D. *Rule 606(a) – Failing to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities*

Respondent obtained waivers of CDSCs for approximately 14 customers by claiming that these customers were disabled when, in fact, they were not. As a result, NASD found Respondent violated Conduct Rules 2110 and 3110. By violating these NASD Rules, 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).

E. Rule 606(b) – failing to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board

Respondent obtained waivers of CDSCs for approximately 14 customers by claiming that these customers were disabled when, in fact, they were not. Respondent's actions violated NASD Conduct Rules 2210 and 3110. As a result, Respondent violated Rules 102, 201, 406, 606(a), 607 and 701. Thus, Respondent also violated Rule 606(b).

F. Rule 607 – engaging in any conduct reflecting adversely on integrity or fitness as a CFP Board designee, upon the marks, or upon the profession

Respondent engaged in conduct reflecting adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he: 1) obtained waivers of CDSCs for approximately 14 customers by claiming that these customers were disabled when, in fact, they were not; 2) caused his employer's books and records regarding the mutual fund redemptions to be inaccurate; and 3) violated NASD Rules 2110 and 3110 and also violated Rules 102, 201, 406, 606(a), 606(b) and 701 of the *Code of Ethics*. Thus, Respondent violated Rule 607.

G. Rule 701 – failing to provide services diligently

Respondent improperly processed waivers of CDSCs for approximately 14 customers whom he identified as disabled when, in fact, they were not. By failing to verify the accuracy of his processing of the CDSC waivers, Respondent failed to provide services diligently. 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 any act or omission that violates the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 102, 201, 406, 606(a), 606(b), 607 and 701 of the *Code of Ethics*. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the above Findings of Fact and Rules Violations. Pursuant to the Settlement Agreement, the Commission issued to Respondent a Private Censure and an additional four hours of Continuing Education coursework over the next six months.

In mitigation, the Commission considered that there was no harm done to clients. In aggravation, the Commission considered that Respondent's actions financially harmed other financial firms, and that Respondent failed to disclose his matter to CFP Board.