CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 19872

This is a summary of a decision issued following the February 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* by knowingly offering securities despite inaccurate financial projections set forth in a private placement memorandum.

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

In August 2006, an anonymous informant filed a complaint against Respondent and another CFP® professional regarding Respondent's involvement in a Securities and Exchange Commission ("SEC") and state regulatory authority investigation.

In January 2009, Respondent entered into a Letter of Acceptance, Waiver and Consent agreement ("AWC") with Financial Industry Regulatory Authority, Inc. ("FINRA," f/k/a National Association of Securities Dealers or "NASD") regarding violations of NASD Rules 2110 and 3010. The AWC arose out of FINRA's investigation of Respondent's sale of shares in a private placement offering ("Offering") conducted in 2004 pursuant to a private placement memorandum ("PPM") that offered shares of Respondent's company ("Company"). Respondent discovered inaccuracies in the financial projections set forth in the PPM but did not disclose the inaccuracies to the purchaser because he determined that the inaccuracies were not material. In the AWC, Respondent consented to paying a $20,000 fine and to a 15-day suspension by FINRA.

III. Commission's Analysis and Conclusions Regarding Rule Violations

A. *Rule 101(b) – A CFP Board designee shall not solicit clients through false or misleading communications or advertisements. In promotional activities, a CFP Board designee shall not make materially false or misleading communications to the public or create unjustified expectations regarding matters relating to financial planning or the professional activities and competence of the CFP Board designee. The term "promotional activities" includes, but is not limited to, speeches, interviews, books and/or printed publications, seminars, radio and television shows, and video cassettes.*

The Commission found that Respondent knowingly used the materially inaccurate projections in his communications to investors, including prospective and existing clients and thereby made materially false and misleading communications to the public and failed to act with integrity. Thus, Respondent violated Rule 101(b).

B. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage 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 found that Respondent failed to disclose material inaccuracies in the PPM to investors and thereby engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. Thus, Respondent violated Rule 102.

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 disclose material inaccuracies in the PPM to investors and thereby failed to exercise reasonable and prudent professional judgment in providing professional services. Thus, Respondent violated Rule 201.

D. *Rule 606(a) – In all professional activities a CFP Board designee shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities.*

The Commission found that Respondent entered into an AWC with FINRA related to alleged violations of NASD Rules 2110 and 3010. Without admitting or denying the findings in the AWC, Respondent consented to a $20,000 fine and a 15-day suspension. By violating NASD Rules 2110 and 3010, 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) – In all professional activities a CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board.*

The Commission found that Respondent violated Rules 101(b), 102, 201, 606(a) and 607 and thereby failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board. Thus, Respondent violated Rule 606(b).

F. *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: 1) a conflict of interest existed when Respondent sold shares in the Offering to existing financial planning clients; 2) Respondent failed to disclose materially inaccurate financial projections contained in the PPM to investors; and 3) Respondent entered into an AWC with FINRA related to alleged violations of NASD Rule 2110 and 3010. Respondent thereby engaged in conduct that reflects adversely on Respondent's integrity and fitness as a CFP Board designee, upon the marks, and upon the profession. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") provides grounds for discipline for a violation of the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 101(b), 102, 201, 606(a), 606(b) and 607 of the *Code of Ethics*. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a 15-day suspension to Respondent.

The Commission cited as mitigating factors that Respondent had no prior disciplinary history and no customer complaints. The Commission cited no aggravating factors.